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Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 98–006N]

HACCP Plan Requirements and Meat and Poultry Product Processing Categories; Policy Clarification

AGENCY: Food Safety and Inspection Service.

ACTION: Policy clarification.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to clarify its policy in regard to HACCP (Hazard Analysis and Critical Control Points) requirements for meat and poultry establishments producing either multiple products that fall within a single processing category or single products that pass through multiple processing categories.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #98–006N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12 St., SW, Washington, DC 20250–3700. All comments submitted in response to this document will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, FSIS published a final rule establishing new requirements intended to improve the safety of meat and poultry products and facilitate the modernization of USDA's meat and poultry inspection system (''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems''; 61 FR 38806). The final rule requires all official meat and poultry establishments to implement HACCP, a science-based process control system. Under the new regulations, all official establishments are responsible for developing and implementing HACCP plans incorporating the controls necessary and appropriate to ensure that their meat or poultry products are safe.

HACCP is a flexible system that enables establishments to develop and implement control systems customized to the nature and volume of their production. Accordingly, FSIS has promulgated regulatory requirements meant to provide meat and poultry establishments with the maximum flexibility for developing and implementing HACCP plans. FSIS is publishing this notice to clarify the regulatory requirements for establishments that wish to develop and implement a single HACCP plan for multiple, similar products or for a single product that passes through multiple processing categories.

Under § 417.2, paragraph (a) of the HACCP requirements, FSIS requires meat and poultry establishments to conduct a hazard analysis to determine what food safety hazards are reasonably likely to occur in the production process and identify the preventive measures it can apply to control those hazards. Whenever a hazard analysis reveals that one or more food safety hazards are reasonably likely to occur, FSIS requires that each establishment develop and implement a written HACCP plan covering each product produced by that establishment. Further, FSIS specifically requires that establishments develop HACCP plans for products that fall into the following processing categories:

''(i) Slaughter—all species.
(ii) Raw product—ground.
(iii) Raw product—not ground.
(iv) Thermally processed—commercially sterile.
(v) Not heat treated—shelf stable.
(vi) Heat treated—shelf stable.
(vii) Fully cooked—not shelf stable.
(viii) Heat treated but not fully cooked—not shelf stable.
(ix) Product with secondary inhibitors—not shelf stable.

Section 417.2(b)(2) states ''A single HACCP plan may encompass multiple products within a single processing category identified in this paragraph, if the food safety hazards, critical control points (CCP's), critical limits, and procedures required to be identified and performed * * * are essentially the same, provided that any required features of the plan that are unique to a specific product are clearly delineated in the plan and are observed in practice.'' Many meat and poultry establishments, especially processing establishments, manufacture numerous products that have most of their processing steps in common. Allowing a single HACCP plan for such products was intended to simplify and improve both compliance and inspection.

For example, an establishment producing both ready-to-eat corned beef and ready-to-eat roast beef could develop and implement a single HACCP plan for both products. The HACCP plan would identify the common CCP's and critical limits (cooking and cooling product in accordance with time/temperature combinations predetermined by the establishment), as well as any processing differences (the corned beef would undergo a curing step). In this example, compliance with HACCP requirements is simplified, and it is probably more efficient and cost-effective to develop and implement a single HACCP plan for the two products than to produce two separate plans. Inspection is also improved and simplified because FSIS inspection personnel can more efficiently and effectively review a single, unified HACCP plan.

In this document, FSIS also is clarifying that meat and poultry establishments may develop a single HACCP plan for a single product that passes through multiple processing categories. It is likely that such HACCP plans would be developed and implemented, for the most part, by establishments that both slaughter (category (i)) and process (categories (ii) through (ix)) meat or poultry. For example, there are numerous establishments that slaughter, grind, and package meat for retail sale. There also are numerous establishments that slaughter, cut up, and package poultry for retail sale. Many of these and similar establishments probably will choose to develop and implement a single HACCP

plan covering both slaughter and processing. Developing and implementing a single HACCP plan for a single product often would be more efficient and cost effective than producing two plans (one for slaughter and one for processing). In many cases, FSIS inspection personnel will be able to more efficiently and effectively review a single HACCP plan that covers all of the processing (including slaughter) within a meat or poultry establishment.

Done in Washington, DC: March 18, 1998.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 98–8432 Filed 3–31–98; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 4, 7, 9, 15, 16, 76, and 110

RIN 3150–AF89

Statement of Organization and General Information; Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising its statement of organization and general information to reflect the creation of the Office of the Chief Financial Officer (OCFO) and the Office of the Chief Information Officer (OCIO), the reorganization of the Office of Administration (ADM), and other minor changes. These amendments are necessary to inform the public of administrative changes within the NRC.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7162, e-mail: dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION: On January 5, 1997, the Commission announced the creation of the OCFO and the OCIO. These offices report directly to the Chairman. These offices were established pursuant to the Chief Financial Officers Act of 1990 and the Clinger-Cohen Act of 1996, respectively. The responsibilities and functions of their predecessor organizations that reported to the Executive Director for Operations (EDO) were transferred to these offices, respectively. Accordingly, the Office of the Controller and the Office of Information Resources Management were abolished. In addition, publications, graphics, printing, and Freedom of Information Act and Privacy Act functions were transferred from the Office of Administration (ADM) to the OCIO.

This final rule also notes the name change of the Office of Personnel to the Office of Human Resources and other minor administrative changes.

Because these amendments deal with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c) (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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10 CFR Part 1

Organization and functions (Government agencies)

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10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 4, 7, 9, 15, 16, 76, and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No.1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.3, paragraph (c), the first sentence is revised to read as follows:

§ 1.3 Sources of additional information.

* * * * *

(c) Information regarding the availability of NRC records under the Freedom of Information Act and the Privacy Act of 1974 may be obtained from the Information Management Division, Office of the Chief Information Officer * * *.

§ 1.25 [Amended]

3. In § 1.25, paragraph (h) is removed, and paragraphs (i) through (l) are redesignated as paragraphs (h) through (k).

§ 1.34 [Removed]

4. Section 1.34 is removed.

5. Sections 1.32 and 1.33 are redesignated as §§ 1.33 and 1.34 and revised to read as follows:

§ 1.33 Office of Enforcement.

The Office of Enforcement—

(a) Develops policies and programs for enforcement of NRC requirements;

(b) Manages major enforcement actions; and

(c) Assesses the effectiveness and uniformity of Regional enforcement actions.

§ 1.34 Office of Administration.

The Office of Administration—

(a) Develops and implements agencywide contracting policies and procedures;

(b) Develops policies and procedures and manages the operation and maintenance of NRC offices, facilities, and equipment;

(c) Plans, develops, establishes, and administers policies, standards, and procedures for the overall NRC security program; and

(d) Develops and implements policies and procedures for the review and publication of NRC rulemakings, and ensures compliance with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act, manages the NRC management directives program, and provides translations services.

6. Under the undesignated center heading ''Executive Director for Operations,'' § 1.31 is redesignated as § 1.32, paragraph (d) is removed, and paragraph (b) is revised to read as follows:

Executive Director for Operations

§ 1.32 Office of the Executive Director for Operations.

* * * * *

(b) The EDO supervises and coordinates policy development and operational activities in the following line offices; the Office of Nuclear Reactor Regulation, the Office of Nuclear Material Safety and Safeguards, the Office of Nuclear Regulatory Research, and the NRC Regional Offices; and the following staff offices: The Office of Enforcement, the Office of Administration, the Office of Investigations, the Office for Analysis and Evaluation of Operational Data, the Office of Small Business and Civil Rights, the Office of Human Resources, the Office of State Programs, and other organizational units as shall be assigned by the Commission. The EDO is also responsible for implementation of the Commission's policy directives pertaining to these offices.

* * * * *

7. A new undesignated center heading and a new § 1.30 are added to read as follows:

Chief Information Officer

§ 1.30 Office of the Chief Information Officer.

The Office of the Chief Information Officer—

(a) Plans, directs, and oversees the NRC's information resources, including technology infrastructure and delivery of information management services, to meet the mission and goals of the agency;

(b) Provides principal advice to the Chairman to ensure that information technology (IT) is acquired and information resources across the agency are managed in a manner consistent with Federal information resources management (IRM) laws and regulations;

(c) Assists senior management in recognizing where information technology can add value while improving NRC operations and service delivery;

(d) Directs the implementation of a sound and integrated IT architecture to achieve NRC's strategic and IRM goals;

(e) Monitors and evaluates the performance of information technology and information management programs based on applicable performance measures and assesses the adequacy of IRM skills of the agency;

(f) Provides guidance and oversight for the selection, control and evaluation of information technology investments; and

(g) Provides oversight and quality assurance for the design and operation of the Licensing Support System (LSS) services and for the completeness and integrity of the LSS database, ensures that the LSS meets the requirements of 10 CFR part 2, subpart J, concerning the use of the LSS in the Commission's high-level waste licensing proceedings, and provides technical oversight of DOE in the design, development, and operation of the LSS.

8. A new undesignated center heading and a new § 1.31 are added to read as follows:

Chief Financial Officer

§ 1.31 Office of the Chief Financial Officer.

The Office of the Chief Financial Officer—

(a) Oversees all financial management activities relating to NRC's programs and operations and provides advice to the Chairman on financial management matters;

(b) Develops and transmits the NRC's budget estimates to the Office of Management and Budget (OMB) and Congress;

(c) Establishes financial management policy including accounting principles and standards for the agency and provides policy guidance to senior managers on the budget and all other financial management activities;

(d) Provides an agencywide management control program for financial and program managers that establishes internal control processes and provides for timely corrective actions regarding material weaknesses that are disclosed to comply with the Federal Manager's Financial Integrity Act of 1982;

(e) Develops and manages an agencywide planning, budgeting, and performance management process;

(f) Develops and maintains an integrated agency accounting and financial management system, including an accounting system, and financial reporting and internal controls;

(g) Directs, manages, and provides policy guidance and oversight of agency financial management personnel activities and operations;

(h) Prepares and transmits an annual financial management report to the Chairman and the Director, Office of Management and Budget, including an audited financial statement;

(i) Monitors the financial execution of NRC's budget in relation to actual expenditures, controls the use of NRC funds to ensure that they are expended in accordance with applicable laws and financial management principles, and prepares and submits to the Chairman timely cost and performance reports;

(j) Establishes, maintains, and oversees the implementation of license fee polices and regulations; and

(k) Reviews, on a periodic basis, fees and other charges imposed by NRC for services provided and makes recommendations for revising those charges, as appropriate.

§ 1.38 [Removed]

9. Section 1.38 is removed.

10. In § 1.39, the section heading and the introductory paragraph are revised to read as follows:

§ 1.39 Office of Human Resources.

The Office of Human Resources

* * * * *

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

11. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

12. In § 2.802, the introductory text of paragraph (b), and paragraphs (e), and (g) are revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A prospective petitioner also may telephone the Rules and Directives Branch on (301) 415–7163 or toll free on (800) 368–5642.

* * * * *

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Chief, Rules and Directives Branch, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will deposit a copy of the docketed petition in the Commission's Public Document Room. Public comment may be requested by publication of a notice of the docketing of the petition in the **Federal Register** or, in appropriate cases, may be invited for the first time upon publication in the **Federal Register** of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

* * * * *

(g) The Chief, Rules and Directives Branch, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555–0001.

13. In § 2.1007, paragraph (a)(2) is revised to read as follows:

§ 2.1007 Access.

(a) * * *

(2) Terminals for access to full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of NRC will be provided at the Commission's Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Field Offices.

* * * * *

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

14. The authority citation for part 4 continues to read as follow:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 207, Pub. L. 95–604, 92 Stat. 3033.

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–1–2000d–4); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891). Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)). Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101). Subpart E also issued under 29 U.S.C. 794.

15. In § 4.4, paragraph (i) is revised to read as follows:

§ 4.4 Definitions.

* * * * *

(i) *Responsible NRC official* means the Director of the Office of Small Business and Civil Rights or any other officer to whom the Executive Director for Operations has delegated the authority to act.

* * * * *

16. Section 4.5 is revised to read as follows:

§ 4.5 Communications and reports.

Except as otherwise indicated, all communications and reports relating to this part should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Communications and reports may be delivered in person to the Commission's offices at 11555 Rockville Pike, Rockville, Maryland 20852–2738.

PART 7—ADVISORY COMMITTEES

17. The authority citation for part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

18. In § 7.22, paragraphs (a) and (b) are revised to read as follows:

§ 7.22 Fiscal and administrative responsibilities.

(a) The Office of the Chief Financial Officer shall keep such records as will fully disclose the disposition of any funds that may be at the disposal of NRC advisory committees.

(b) The Office of the Chief Information Officer shall keep such records as will fully disclose the nature and extent of activities of NRC advisory committees.

* * * * *

PART 9—PUBLIC RECORDS

19. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

§ 9.53 [Amended]

20. In § 9.53, paragraph (a), remove the words ''Director, Office of Administration'' and ''Director, or his designee'' each time they appear, and add in their place the words ''Freedom of Information Act and Privacy Act Officer,'' and in paragraph (b), remove the words ''Director, Office of Administration'' each time they appear, and add in their place the words ''Freedom of Information Act and Privacy Act Officer.''

§ 9.54 [Amended]

21. In § 9.54, paragraph (b), remove the words ''Director, Office of Administration'' and add in their place the words ''Freedom of Information Act and Privacy Act Officer.''

§ 9.60 [Amended]

22. In § 9.60, paragraph (a), remove the words ''Director, Office of Administration, or his designee,'' and add in their place the words ''Freedom of Information Act and Privacy Act Officer.''

§ 9.65 [Amended]

23. In § 9.65, in paragraph (a), the introductory text, and paragraph (b), remove the words ''Director, Office of Administration, or the Director's designee'' each time they appear, and add in their place the words ''Freedom of Information Act and Privacy Act Officer'' and remove the words ''the Assistant Inspector General for Audits.''

24. In § 9.66, paragraph (a)(1), the introductory text, and in paragraphs (a)(2) and (a)(3), remove the words ''Director, Office of Administration, or the Director's Designee'' and add in their place the words ''Freedom of Information Act and Privacy Act Officer,'' in paragraph (c)(2), remove the words ''Director, Office of Administration,'' and add in their place the words '' Freedom of Information Act and Privacy Act Officer,'' in paragraphs (a)(1) and (a)(2) remove the words ''Assistant Inspector General for Audits,'' each time they appear, and revise paragraph (b) to read as follows:

§ 9.66 Determinations authorizing or denying correction of records; appeals.

* * * * *

(b) Appeals from initial adverse determinations. If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may appeal that action and request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. An appeal of an initial determination must be filed within 60 days of the receipt of the initial determination. The appeal must be in writing and addressed to the Freedom of Information Act and Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, for submission to the appropriate appellate authority for a final determination. The appeal should clearly state on the envelope and in the letter ''Privacy Act Correction Appeal.'' The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Inspector General or Executive Director for Operations. Requests for final review must set forth the specific item of information sought to be corrected or amended and should include, where appropriate, documents supporting the correction or amendment.

* * * * *

§ 9.69 [Amended]

25. In § 9.69, paragraph (a), remove the words, ''Director, Office of Administration, or his designee'' and add in their place the words ''Freedom of Information Act and Privacy Act Officer.''

§ 9.85 [Amended]

26. In § 9.85, remove the words, ''Director, Division of Freedom of Information and Publications Services'' and add in their place the words ''Freedom of Information Act and Privacy Act Officer.''

PART 15—DEBT COLLECTION PROCEDURES

27. The authority citation for part 15 continues to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); sec. 1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 4 CFR 101–105.

28. Section 15.3 is revised to read as follows:

§ 15. 3 Communications.

Unless otherwise specified, all communications concerning the regulations in this part should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Communications may be delivered in person to the Commission's offices located at 11555 Rockville Pike, One White Flint North, Rockville, Maryland 20852–2738.

29. In § 15.35, the introductory text of paragraph (c) is revised to read as follows:

§ 15.35 Payments.

* * * * *

(c) To whom payment is made. Payment of a debt is made by check, electronic transfer, draft, or money order payable to the United States Nuclear Regulatory Commission and mailed or delivered to the Division of Accounting and Finance, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, unless payment is—

* * * * *

PART 16—SALARY OFFSET PROCEDURES FOR COLLECTING DEBTS OWED BY FEDERAL EMPLOYEES TO THE FEDERAL GOVERNMENT

30. The authority citation for part 16 continues to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat, 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); sec.1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 4 CFR 101–105.

31. In § 16.1, paragraph (e) is revised to read as follows:

§ 16.1 Purpose and scope.

* * * * *

(e) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the NRC. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

32. The authority citation for part 76 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Section 76.7 also issued under Pub. L. 95–601. sec. 10, 92 Stat 2951 (42 U.S.C. 5851).

Section 76.22 is also issued under sec.193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Section 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

33. In § 76.7, paragraph (e) (3) is revised to read as follows:

§ 76.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the NRC Region III Office listed in appendix D to part 20 of this chapter or by contacting the NRC Publishing Services Branch.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

34. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat 2835 (42 U.S.C.2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

35. In § 110.131, paragraph (a) is revised to read as follows:

§ 110.131 Petition for rulemaking.

(a) A petition for rulemaking should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

* * * * *

Dated at Rockville, Maryland, this 18th day of March 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–8408 Filed 3–31–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 98–04]

RIN 1557–AB55

Lending Limits

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its lending limits regulation by making several technical changes designed to clarify certain provisions in the current rule.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William C. Kerr, Special Assistant, Special Supervision, (202) 874–5170; Saumya R. Bhavsar, Attorney, Legislative and Regulatory Activities, (202) 874–5090; or Aline J. Henderson, Senior Attorney, or Laura Goldman, Attorney, Bank Activities and Structure, (202) 874–5300. Office of the Comptroller of Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC comprehensively revised its regulations in 12 CFR part 32 in 1995 (60 FR 8526 (February 15, 1995)), as part of its Regulation Review Program (Program) to update and streamline the regulation and eliminate requirements that imposed inefficient and costly regulatory burdens on national banks. These amendments to part 32 included changing the definition of ''loans and extensions of credit'' to exempt, under certain circumstances, additional funds advanced for the payment of maintenance and operating expenses necessary to preserve the value of real property securing a loan. *See* 12 CFR 32.2(j)(2)(i). In addition, the amendments changed the definition of ''capital and surplus'' to allow a national bank, in most instances, to calculate its lending limit based on information contained in the bank's most recent quarterly Consolidated Report of Condition and Income (Call Report). *See* id. § 32.4.

Some of the part 32 changes prompted requests for: (a) further clarification and extension of the exemption for funds advanced to preserve and maintain collateral to loans secured by personal property as well as loans secured by real property; and (b) clarification of the date on which a national bank must recalculate its capital and surplus. In response to these requests, the OCC published a notice of proposed rulemaking (proposal) on July 17, 1996 (61 FR 37227), to address these issues. The proposal also made several technical changes designed to improve part 32 without changing its substance. The proposal reflected the OCC's continuing commitment to assess the effectiveness of the rules it has revised under the Program and to make further changes where necessary to improve a regulation.

Comments Received and Changes Made

The OCC received 11 comments on the proposal, six of which came from banks and bank holding companies and five from trade associations. Most commenters supported the OCC adding increased flexibility and clarity to the lending limits regulation. Commenters generally commended the OCC's efforts, while some commenters offered alternatives to certain of the proposed changes.

Upon further review, the OCC has decided not to adopt the proposal's exemption from the lending limit for additional funds advanced to preserve and maintain collateral to loans secured by personal property. However, the OCC has adopted the proposal's other changes.

Discussion

Exemption for Funds Advanced to Protect Personal Property Collateral (§ 32.2(j))

Under § 32.2(j)(2)(i), additional funds advanced for the benefit of a borrower by a bank for the payment of certain expenses necessary to preserve the value of real property are not considered to be a ''loan or extension of credit'' for purposes of 12 U.S.C. 84 and part 32 under certain circumstances. The OCC proposed amending § 32.2(j)(2)(i) to include advances to protect personal property collateral and to treat any additional advance to protect collateral—whether personal property or real property—the same.

Commenters supported this proposed amendment. Upon further review, however, the OCC has determined that it would be inappropriate to adopt the change to § 32.2(j)(2)(i) at this time. As a result of its continued monitoring of credit quality standards, the OCC is concerned that credit standards have been relaxed since the proposed rule was published. Accordingly, the OCC has decided it would not be appropriate at this time to modify this prudential

safeguard that limits the amount a bank may lend to any one borrower.

The OCC is retaining the existing exemption for advances made to protect real property collateral. Certain factors supporting the exemption for real property collateral do not necessarily apply to personal property. For instance, in the case of real estate, foreclosure is a time-consuming process in many states, often making it necessary for a borrower to undertake repairs and incur other expenses to maintain the value of the collateral while the foreclosure action proceeds. Thus, the final rule leaves unchanged the existing rule governing additional funds advanced to protect collateral.

Calculation of Lending Limits (§ 32.4)

Former § 32.4(a) required a bank to calculate its lending limit as of the later of the date when the bank's Call Report ''is required to be filed'' or when the bank's capital category changes for purposes of the prompt corrective action provisions of 12 U.S.C. 1831o and 12 CFR part 6 (unless the OCC requires a national bank to calculate its lending limit more frequently for safety and soundness reasons).

Because the General Instructions to the Call Report refer to two separate ''filing'' dates, questions arose under the former rule concerning the date on which a recalculated lending limit is to become effective. The first potential filing date identified in the General Instructions, termed the ''report date,'' is defined as the last calendar day of each calendar quarter. The second potential filing date, termed the ''submission date,'' is the date by which the appropriate Federal banking agency must receive the Call Report. For most banks, the maximum submission date is 30 days after the report date. Thus, the reference in the former rule to the date when the Call Report ''is required to be filed'' could produce some confusion as to when a recalculated limit becomes effective, depending on which ''filing'' date is used.

Proposed § 32.4 resolved this ambiguity by distinguishing the ''calculation date'' of a lending limit from its ''effective date.'' Assuming that a national bank's capital category has not changed, the bank is to calculate its lending limit using numbers reported in the bank's most recent Call Report, and, therefore, base its lending limit on the bank's capital and surplus as of the end of the most recent calendar quarter (the calculation date). However, this new limit will not be effective until the earlier of the date on which the bank submits its Call Report or the date by which the bank is required to submit the Call Report (the effective date). The proposal amended § 32.4(a)(1), redesignated current § 32.4(b) as § 32.4(c), and added a new § 32.4(b) that set forth the effective date for using the updated numbers to accomplish this result.

Under the proposal, if a bank's capital category for prompt corrective action purposes changes, then the bank must determine its lending limit as of the date on which the capital category changes. The new limit in this instance will be effective on the date that the limit is to be recalculated. The proposal also stated that the OCC also would continue its practice of permitting a recalculation of lending limits at a point during a quarter when there is a material change in a bank's capital arising from corporate activities such as a merger or stock issuance.

The OCC received seven comments on the proposal. Five commenters agreed with the clarification of the ''calculation date'' versus ''effective date,'' noting that the change removes ambiguity as to when a national bank's recalculated lending limit becomes effective.

Two commenters disagreed with the proposal. One commenter opposed the proposal because, in this commenter's views, the proposal would further delay implementation of a new lending limit by 25 days. The OCC notes that the proposed change would simply clarify what is the industry practice under the current rule, and would not create any additional delay in the implementation of an effective date. Under both the former rule and this final rule, a bank is to calculate its lending limit based on the capital in the bank as of the last day of a calendar quarter. However, it will not be able to calculate this new lending limit until it gathers most of the information it will need to prepare and file its Call Report.

Another commenter opposed the date of submission of a bank's Call Report as the effective date because the commenter thought that the flexibility to submit Call Reports on any day of the month up to the mandatory submission date would allow for inconsistent effective dates. The commenter recommended that the date should be either the date the Call Report is required to be submitted or as per letter of instruction from the OCC.

While it is true that the effective date for new lending limits will be determined in most cases by when a bank submits its Call Report, the OCC believes that the benefits of clarifying when a new lending limit is effective outweigh the minimal risk that a bank will make an unsafe loan in anticipation of a lower lending limit. Any loan that becomes nonconforming because of a drop in the bank's lending limit is subject to the provisions of § 32.6, which require a bank to use reasonable efforts to bring the loan into conformity with the lending limit unless to do so would be inconsistent with safe and sound banking practices. Moreover, the clarification regarding the effective date of a new lending limit will not affect the amount of the limit, because lending limits are to be calculated by using data from the last day of a calendar quarter. The OCC believes that the final rule is sufficiently flexible to accommodate the commenter's concern while also removing any ambiguity that may have existed concerning the difference between the calculation date of a new lending limit and its effective date.

Technical Amendments (§§ 32.2(b) and 32.3(c))

The proposal made several clarifying technical amendments to part 32. These amendments do not affect the substance of the current rule. The technical amendments are summarized below.

Former § 32.2(b) stated that capital and surplus includes, among other things, a bank's Tier 1 and Tier 2 capital ''included in the bank's risk-based capital under the OCC's Minimum Capital Ratios in Appendix A of part 3 of this chapter.'' The proposal clarified this definition by changing that language to refer to a bank's Tier 1 and Tier 2 capital ''calculated under the OCC's risk-based capital standards set forth in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.''

Former § 32.3(c)(4)(ii) exempted a loan from the lending limits to the extent that the loan is secured by an unconditional takeout commitment or guarantee of a Federal agency. In explaining when a commitment or guarantee is unconditional, former § 32.3(c)(4)(ii)(B) noted that protection against loss is not materially diminished or impaired by a procedural requirement, such as ''an agreement to take over only in the event of default . . .'' The proposal clarified that the phrase ''an agreement to take over'' means an agreement to pay on an obligation.

Finally, former § 32.3(c)(6)(ii)(B) stated that a bank must establish procedures to revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times. The proposal clarified that the revaluation must be periodic.

The OCC requested comment on the proposed technical changes and

suggestions for other technical changes that would clarify or improve the rule. Three commenters addressed the technical amendments, and all three supported the changes. One commenter specifically supported the clarification that Tier 1 and Tier 2 capital is to be calculated under the OCC's risk-based capital standards and as reported in the Call Report. In light of the comments received and the OCC's further deliberations, the final rule adopts the technical changes as proposed.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. As is explained in greater detail in the preamble to this final rule, the final rule makes only stylistic changes designed to clarify various sections of part 32. The rule imposes no new burden of any sort on national banks. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed in this final rule the regulatory alternatives considered, as would otherwise be required by the Unfunded Mandates Act of 1995. As discussed in the preamble, this final rule only clarifies certain provisions of the former rule.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations, is amended as follows:

PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

§ 32.2 [Amended]

2. In § 32.2, paragraph (b) is revised to read as follows:

§ 32.2 Definitions.

* * * * *

(b) *Capital and surplus* means—

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set forth in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(1) of this section, as reported in the bank's Call Report filed under 12 U.S.C. 161.

* * * * *

§ 32.3 [Amended]

3. In § 32.3, paragraph (c)(4)(ii)(B) is amended by removing the term ''take over'' from the second sentence and adding in lieu thereof the term ''pay on the obligation'', and paragraph (c)(6)(ii)(B) is amended by adding the word ''periodically'' before the word ''revalue''.

4. Section 32.4 is revised to read as follows:

§ 32.4 Calculation of lending limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 84 and this part, a bank shall determine its lending limit as of the most recent of the following dates:

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3.

(b) *Effective date.* (1) A bank's lending limit calculated in accordance with paragraph (a)(1) of this section will be effective as of the earlier of the following dates:

(i) The date on which the bank's Call Report is submitted; or

(ii) The date on which the bank's Call Report is required to be submitted.

(2) A bank's lending limit calculated in accordance with paragraph (a)(2) of this section will be effective on the date that the limit is to be calculated.

(c) *More frequent calculations.* If the OCC determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

Dated: March 20, 1998.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 98–8558 Filed 3–31–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–104–AD; Amendment 39–10427; AD 98–07–08]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra and Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all IAI, Ltd., Model 1125 Westwind Astra and Astra SPX series airplanes. This action requires disabling of the baggage compartment electrical heating blankets. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent overheating of the electrical heating blankets, and consequent increased risk of fire in the baggage compartment.

DATES: Effective April 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on all IAI, Ltd., Model 1125 Westwind Astra and Astra SPX series airplanes. The CAAI advises that it has received reports of overheating of baggage compartment heating blankets, which caused delamination, heat damage, and burn marks to the blankets and baggage compartment liner. The cause of this overheating is currently under investigation. This condition, if not corrected, could result in increased risk of fire in the baggage compartment.

Explanation of Relevant Service Information

The manufacturer has issued Astra Alert Service Bulletin 1125–25A–175, dated February 22, 1998, which describes procedures for disabling of the baggage compartment electrical heating blankets. The disabling involves pulling certain circuit breakers, securing the open circuit breakers with clips or ties, tagging as ''Disabled per Service Bulletin 1125–25A–175,'' and installing an ''INOP'' placard on the BAGGAGE COMPRT HEAT switch. The CAAI classified this alert service bulletin as mandatory and issued Israeli airworthiness directive 25–98–02–07, dated February 23, 1998, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent overheating of the electrical heating blankets located in the baggage compartment, and consequent increased risk of fire. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–104–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–08 Israel Aircraft Industries (IAI), Ltd.: Amendment 39–10427. Docket 98–NM–104–AD.

Applicability: All Model 1125 Westwind Astra and Astra SPX series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical heating blankets, and consequent increased risk of fire in the baggage compartment, accomplish the following:

(a) Within 24 hours after the effective date of this AD, disable the baggage compartment heating blankets in accordance with Astra Alert Service Bulletin 1125–25A–175, dated February 22, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Astra Alert Service Bulletin 1125–25A–175, dated February 22, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 25–98–02–07, dated February 23, 1998.

(e) This amendment becomes effective on April 16, 1998.

Issued in Renton, Washington, on March 24, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8224 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–67–AD; Amendment 39–10428; AD 97–24–17]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting priority letter airworthiness directive (AD) 97–24–17, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada (BHTC) Model 407 helicopters by individual letters. This AD requires inspections of components in the tail rotor drive system for scratches, cracks, fretting, corrosion, and proper torquing, lubrications of the oil cooler blower shaft hanger bearings and oil cooler hanger bearings (hanger bearings), and removal of corrosion inhibitive adhesive barrier tape (barrier tape) from the tail rotor gearbox and the tail rotor gearbox support assembly faying surfaces. This amendment is prompted by numerous reports of three problems, all of which are related to the tail rotor drive system. The actions specified by this AD are intended to: detect scratches, cracks, fretting, and corrosion in the disc pack couplings; prevent inadequate lubrication of the hanger bearings and oil cooler blower shaft; and prevent loss of mounting torque on the tail rotor gearbox. Failure of any of these components could result in loss of power to the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective April 16, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–24–17, issued on November 20, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–67–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas, 76137–4298, telephone (817) 222–5159, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on the BHTC Model 407 helicopter. Transport Canada advises that some operators have reported a number of cracked disc pack couplings in Thomas disc coupling packs, part number (P/N) 406–040–340-101, and a few reports of cracks and breaks in the oil cooler blower and oil tank support brackets and associated airframe components. Transport Canada issued AD CF–97–19, dated September 30, 1997, to require a one-time inspection of the disc pack couplings, inspection of the oil cooler blower and oil tank support brackets for cracks, and general condition of the tail rotor assembly, tail rotor gearbox, tail rotor drive system, and tailboom. Later, Transport Canada also issued AD CF–97–20, dated October 17, 1997, to require repetitive inspections of the disc pack couplings every 25 hours time-in-service (TIS).

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed about the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information including the information contained in the FAA service difficulty data base, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. After reviewing the information received from Transport Canada, the reports from operators of service difficulties, and discussions with the manufacturer, the FAA further determined that AD actions relating to other tail rotor drive system components was necessary.

On November 20, 1997, the FAA issued priority letter AD 97–24–17, applicable to BHTC Model 407 helicopters, which requires visually inspecting each disc pack coupling for scratches, cracks, fretting, or corrosion and for proper torque of the disc pack coupling retaining nuts and bolts;

lubricating the oil cooler blower shaft hanger bearings; listening and feeling for binding roughness of the hanger bearings; inspecting the splines on the oil cooler blower shaft and splined flywheel adapter; removing the adhesive barrier tape from between the tail rotor gearbox (gearbox) and the gearbox support assembly; inspecting the gearbox, gearbox support assembly, and gearbox mounting pads for wear, cracks, or elongated holes; inspecting the nuts that secure the gearbox to the tailboom for proper torquing; and inspecting the skin around the area of these components for corrosion or loose, cracked, or missing rivets. Priority Letter AD 97–24–17 superseded priority letter AD 97–22–15, Docket No. 97-SW–56–AD, issued October 23, 1997, which required a portion of the same AD actions as are currently required by this AD. Those actions were prompted by numerous reports of problems related to the tail rotor drive system.

There have been several reports of disc cracks in some disc pack couplings after as few as 35 hours TIS. A crack in the disc pack coupling can result in failure of the disc pack coupling, loss of tail rotor drive, and subsequent loss of control of the helicopter.

There have also been several reports of hanger bearing roughness due to insufficient lubrication. The cause of the insufficient lubrication has not been determined. There have also been at least two reports of bearing cages and balls separating from the hanger bearing due to the lack of lubrication. Failure of a hanger bearing can result in an unsafe level of vibration, failure of the tail rotor drive system, and subsequent loss of control of the helicopter.

Finally, there have been at least ten (10) reports of undertorqued tail rotor gearbox attachment nuts. In one case, a foreign operator reported that the gearbox attachment nuts were properly torqued during an inspection at 119 hours TIS. A subsequent inspection at 300 hours TIS revealed that the gearbox attachment nuts were loose. Further inspection revealed a separated dowel pin, damaged threads on all four studs, and elongated gearbox attachment holes on the tailboom. The pilot reported feeling some vibration prior to the inspection. Another operator reported that all four gearbox attachment nuts were determined to be undertorqued after only 27.5 hours TIS since manufacture. There have also been several reports of excessive tail rotor drive system vibration from other operators. These vibrations may indicate improperly torqued tail rotor gearbox attachment nuts. There is concern that the thickness of the corrosion inhibitive adhesive barrier MIL-T–23142 tape, which was installed at the factory between the gearbox and gearbox support assembly, is reduced when the gearbox attachment nuts are torqued to the required torque value. This reduction in tape thickness results in a lower clamping force, which allows relative motion between the gearbox and the gearbox support assembly due to loss of torque on the gearbox attachment nuts and studs. The helicopter manufacturer has already incorporated a design change that eliminates the barrier tape, starting with helicopter serial number (S/N) 53225. Loss of torque on the gearbox attachment nuts could result in separation of the tail rotor gearbox from the tailboom and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTC Model 407 helicopters of the same type design, the FAA issued superseding priority letter AD 97–24–17. The AD requires visually inspecting each disc pack coupling for scratches, cracks, fretting, or corrosion and for proper torque of the disc pack coupling retaining nuts and bolts; lubricating the oil cooler blower shaft hanger bearings; listening and feeling for binding or roughness of the oil cooler blower shaft hanger bearings; inspecting the splines on the oil cooler blower shaft and splined flywheel adapter; removing the adhesive barrier tape from between the tail rotor gearbox (gearbox) and the gearbox support assembly; inspecting the gearbox, gearbox support assembly, and gearbox mounting pads for wear, cracks, or elongated holes; inspecting the nuts that secure the gearbox to the tailboom for proper torquing; and inspecting the tailboom skin around the area of these components for corrosion or loose, cracked, or missing rivets. The tail rotor drive system provides the power to the tail rotor to permit the operator to offset the torque effects of the main rotor system during flight. Due to the criticality of these tail rotor drive system components to the continued safe flight of this model helicopter and the short times before compliance is required, this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 20, 1997 to all known U.S. owners and operators of BHTC Model 407 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–67–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant

regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety. Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 97–24–17 Bell Helicopter Textron Canada: Amendment 39–10428. Docket No. 97–SW–67–AD.

Applicability: Model 407 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

(a) Tail Rotor Drive Coupling Disc Pack Inspections:

To prevent failure of a tail rotor drive coupling disc pack (disc pack coupling), part number (P/N) 406–040–340–101, loss of tail rotor drive and subsequent loss of control of the helicopter, within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, accomplish the following:

(1) Visually inspect each of the eight (8) disc pack couplings for any scratch, crack, fretting, or corrosion. This inspection can be accomplished with the disc pack couplings installed. If any scratch, crack, fretting, or corrosion is found, remove and replace the disc pack coupling with an airworthy disc pack coupling. Torque on replacement disc pack coupling nuts and bolts must be a minimum of the run-on-tare torque plus 150 inch-lbs. to a maximum of the run-on-tare torque plus 180 inch-lbs.

(2) Inspect the four nuts and bolts that attach each of the disc pack couplings to the driveshaft and tail rotor gearbox adapters for proper torque. Apply a minimum torque of 170 inch-lbs. to a maximum torque of 175 inch-lbs., which includes a 20 inch-lbs. run-on-tare torque.

Note 2: This torque inspection should be performed on the nuts instead of the bolt heads wherever possible.

(i) If there is no nut or bolt movement, the torque is acceptable.

(ii) If any nut or bolt moved, remove and replace the disc pack coupling with an airworthy disc pack coupling. Torque on the replacement disc pack coupling nuts and bolts must be a minimum of the run-on-tare torque plus 150 inch-lbs. to a maximum of the run-on-tare torque plus 180 inch-lbs.

(b) Oil Cooler Blower Shaft (Fan Shaft) Hanger Bearing Lubrication:

To prevent failure of an oil cooler blower shaft hanger bearing (hanger bearing), P/N 406–040–339, that can result in an unsafe level of vibration, failure of the tail rotor drive system, and subsequent loss of control of the helicopter, within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, accomplish the following:

(1) Gain access to the oil cooler blower, P/N 206–061–432–115.

(2) Grease both oil cooler blower shaft hanger bearings.

(c) Oil Cooler Blower Hanger Bearing Inspection:

To prevent failure of the hanger bearing, P/N 406–040–339, that can result in an unsafe level of vibration, failure of the tail rotor drive system, and subsequent loss of control of the helicopter, within 25 hours TIS, and thereafter at intervals not to exceed 100 hours TIS, accomplish the following:

(1) Gain access to the oil cooler blower, P/N 206–061–432–115.

(2) Remove the forward short shaft, P/N 406–040–315–111.

(3) Remove the aft short shaft, P/N 407–040–325–101.

(4) Manually rotate the oil cooler blower shaft, P/N 406–040–320–101, at various speeds and feel both the bearing hanger housings and the oil cooler blower shaft. If there is any binding or roughness indicated by feel or sound, remove the oil cooler blower shaft and replace any unairworthy hanger bearing with an airworthy hanger bearing.

(5) Grease both oil cooler blower hanger bearings.

(6) Inspect the splines on the oil cooler blower shaft and on the splined flywheel adapter, P/N 407–040–316–101, for airworthy condition.

(d) Adhesive Barrier Tape Between Tail Rotor Gearbox and Gearbox Support Assembly Removal From Helicopters Prior To Serial Number (S/N) 53225:

To prevent separation of the tail rotor gearbox from the tailboom and subsequent loss of control of the helicopter, for helicopters prior to S/N 53225, within 25 hours TIS, accomplish the following:

(1) Remove cowling and covers to expose the tail rotor gearbox (gearbox) and the gearbox support assembly, P/N 407–030–833–101.

(2) Remove the gearbox from the gearbox support assembly.

(3) Remove all corrosion inhibitive adhesive barrier tape (MIL–T–23142) between the gearbox and the gearbox support assembly faying surfaces.

(4) Reinstall the gearbox.

(i) When reinstalling the gearbox, DO NOT use barrier tape on faying surfaces.

(ii) Coat the dowel pins and the shank portion of the gearbox studs that interface with the gearbox support assembly with epoxy polyamide primer (MIL–P–23377).

(iii) Coat the gearbox support assembly mounting pads with corrosion inhibitive sealant conforming to MIL–S–81733.

(iv) Reinstall the gearbox on the gearbox support assembly and torque the nuts to the required torque within 15 minutes of primer and sealant application. Torque on the gearbox attachment nuts must be a minimum of the run-on-tare torque plus 100 inch-lbs. to a maximum of the run-on-tare torque plus 140 inch-lbs.

(e) Tail Rotor Gearbox Attachment Inspection:

To prevent separation of the tail rotor gearbox from the tailboom and subsequent loss of control of the helicopter, within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, accomplish the following:

(1) Remove cowling and covers to expose the tail rotor gearbox (gearbox) and gearbox support assembly, P/N 407–030–833–101.

(2) Inspect the four nuts that attach the gearbox to the tailboom for proper torque. Apply a minimum torque of 120 inch-lbs. to a maximum torque of 125 inch-lbs., which includes a run-on-tare torque of 20 inch-lbs.

(i) If there is no nut or bolt movement, the torque is acceptable.

(ii) If any of the nuts or bolts move, remove the gearbox from the gearbox support assembly and accomplish the following:

(A) Inspect the tail rotor gearbox.

(1) If there is any wear on a gearbox mounting pad, replace the gearbox with an airworthy gearbox.

(2) If there is a loose, missing, or unairworthy stud or dowel pin, replace the gearbox with an airworthy gearbox.

(B) Inspect the gearbox support assembly.

(1) If there is any wear on a gearbox support assembly mounting pad, remove and replace the gearbox support assembly with an airworthy gearbox support assembly.

(2) If there is a crack or elongated hole in the gearbox support assembly, remove and

replace the gearbox support assembly with an airworthy gearbox support assembly.

(3) If there is any loose, cracked, or missing rivets, or cracked or corroded skin in the area of the double rivet row at the aft tailboom-to-gearbox support assembly attachment, replace all loose, cracked, or missing rivets. Repair or replace a tailboom that has cracked or corroded skin.

(C) When installing the gearbox on the gearbox support assembly:

(1) DO NOT use barrier tape on faying surfaces.

(2) Coat the dowel pins and the shank portion of the gearbox studs that interface with the gearbox support assembly with epoxy polyamide primer (MIL–P–23377).

(3) Coat the gearbox support assembly mounting pads with corrosion inhibitive sealant conforming to MIL–S–81733.

(4) Torque the nuts to the required torque within 15 minutes of primer and sealant application. Torque on the gearbox attachment nuts must be a minimum of the run-on-tare torque plus 100 inch-lbs. to a maximum of the run-on-tare torque plus 140 inch-lbs.

(D) Inspect the tailboom.

(f) Report any instances of loose or undertorqued tail rotor gearbox attachment nuts, unairworthy oil cooler blower hanger bearings, unairworthy oil cooler blower shafts, unairworthy splined flywheel adapters, or disc pack couplings with more than one unairworthy disc, within 10 working days after discovery to Mr. Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298, telephone (817) 222–5159, fax (817) 222–5783. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(i) This amendment becomes effective on April 16, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 97–24–17, issued November 20, 1997, which contained the requirements of this amendment.

Note 4: The subjects of this AD are addressed in Transport Canada AD CF–97–19, dated September 30, 1997, and AD CF–97–20, dated October 17, 1997.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8456 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–98–AD; Amendment 39–10443; AD 98–07–22]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model HS 748 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop during flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range was used improperly during flight. The actions specified in this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective April 16, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this amendment, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since British Aerospace Model HS 748 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

U.S. Type Certification of the Airplane

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

This AD requires revising the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

This is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Cost Impact

None of the British Aerospace Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–98–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–22 British Aerospace Regional Aircraft (Formerly British Aerospace, Aircraft Group): Amendment 39–10443. Docket 97–NM–98–AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of

the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Selection of the flight fine pitch stop lever to ''withdrawn'' while in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on April 16, 1998.

Issued in Renton, Washington, on March 26, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8540 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–63–AD; Amendment 39–10430; AD 98–07–10]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model AB 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta S.p.A. (Agusta) Model AB 412 helicopters. This action requires an inspection of the tail rotor blades for debond voids and replacement, if necessary. This amendment is prompted by the loss of a tail rotor blade tip on a tail rotor blade while the helicopter was in service. This condition, if not corrected, could result in increased vibration levels, damage to the tail rotor drive system or tail rotor assembly, and subsequent loss of control of the helicopter.

DATES: Effective April 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–63–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta Model AB 412 helicopters with tail rotor blades, part number (P/N) 212–010–750–105, serial number A5–(all numbers). The RAI advises that debond voids can result in loss of the tip cap closure block, P/N 209–010–719–3, from the blade, causing a severely out-of-balance tail rotor assembly, increased helicopter vibration levels, damage to the tail rotor drive system or tail rotor assembly, and subsequent loss of control of the helicopter.

Agusta has issued Agusta Bollettino Tecnico (Technical Bulletin) No. 412–66, dated June 27, 1997, which specifies an inspection of the tail rotor blades for debond voids between the tip cap and blade spar/skin. The RAI classified this Technical Bulletin as mandatory and issued AD 97–194, dated July 9, 1997, in order to assure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This AD is being issued to prevent increased vibration levels, damage to the tail rotor drive system or tail rotor assembly, and subsequent loss of control of the helicopter. This AD requires an inspection of the tail rotor blades for debond voids and replacement, if necessary. The actions are required to be accomplished in accordance with the technical bulletin described previously.

None of the Agusta Model AB 412 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. register in the future, it would require approximately 1 work hour per helicopter for the inspection and 4 work hours for the replacement, if necessary, of a tail rotor blade. The average labor rate is $60 per work hour. Required blades, if needed, would cost $7,922 per blade. Based on these figures, the cost impact of this AD, should a helicopter be placed on the U.S. Register, would be $8,222 per helicopter, assuming an inspection and replacement of a tail rotor blade are accomplished.

Since this AD action does not affect any helicopter that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are

invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–63–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–07–10 Agusta S.p.A.: Amendment 39–10430. Docket No. 97–SW–63–AD.

Applicability: Agusta Model AB 412 helicopters with tail rotor blades, part number (P/N) 212–010–750–105, serial number (S/N) A5–(all numbers), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 10 hours time-in-service, unless accomplished previously.

To prevent increased vibration levels, damage to the tail rotor drive system or tail rotor assembly, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect tail rotor blades for debond voids in accordance with the Accomplishment Instructions of Agusta Bollettino Tecnico (Technical Bulletin) No. 412–66, dated June 27, 1997 (hereafter referred to as ''Technical Bulletin'').

(1) If a debond void is detected which does not exceed the limits prescribed in paragraph 3 of the Technical Bulletin, repair the tail rotor blade (blade) or replace it with an airworthy blade.

(2) If a debond void exceeds the limits prescribed in paragraph 3 of the Technical Bulletin, replace the blade with an airworthy blade.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits will not be issued.

(d) The inspection shall be done in accordance with Agusta Technical Bulletin No. 412–66, dated June 27, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 16, 1998.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–194, dated July 9, 1997.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8464 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–28–AD; Amendment 39–10429; AD 98–07–09]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters, that requires installing a safety washer kit designed to preclude separation of the stabilizer bar damper link (damper link) if the damper link rod end bushing (bushing) loosens and exits the damper link rod end. This amendment is prompted by two reported incidents in which the bushings loosened and exited the damper link rod ends, allowing the damper link to slide over the retention bolt and separate from the stabilizer bar (in the first incident), and from the hydraulic damper (in the second incident). The actions specified by this AD are intended to prevent failure of the damper link assembly, which can result in degraded control response and subsequent loss of control of the helicopter.

DATES: Effective May 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the federal Register as of May 6, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen E. Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5159, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTI Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters was published in the **Federal Register** on May 20, 1997 (62 FR 27554). That action proposed to require installing a safety washer kit designed to preclude separation of the damper link if the bushing loosens and exits the damper link rod end.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter states that the helicopters are controllable with one damper link disconnected. The commenter also states that a standard AN970–3 safety washer drilled out to 0.250-inch and coned should be allowed to be used as an alternate part to the BHTI safety washer kit. The commenter states that the modified AN970–3 safety washer is the same configuration as the BHTI safety washers used on the lateral cyclic torque tube and only costs pennies.

The FAA does not concur with the comment. The commenter did not provide any support for his statement that the helicopters are controllable with one damper link disconnected. The commenter indicates that he has been installing a modified safety washer on BHTI Model 47 series helicopters for decades. Although the commenter may believe that his modified safety washer is as airworthy as BHTI's safety washer, he has provided no engineering design data that support his assertion or show that his modified safety washer is of the same configuration or of the same material quality as BHTI's safety washer. Without such supporting data, the FAA cannot approve the use of the commenter's modified safety washer.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 1,868 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $188 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $463,264.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–07–09 Bell Helicopter Textron, Inc.: Amendment 39–10429. Docket No. 96–SW–28–AD.

Applicability: Model 47B, 47B–3, 47D, 47D–1, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service or within the next 120

calendar days, whichever occurs first, unless accomplished previously.

To prevent failure of the stabilizer bar damper link assembly, which can result in degraded control response and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the stabilizer bar damper link assemblies from the helicopter, install a safety washer kit, part number (P/N) CA–047–96–022–1, and reinstall the stabilizer bar damper link assemblies onto the helicopter in accordance with the Accomplishment Instructions contained in Bell Helicopter Textron, Inc. Alert Service Bulletin No. 47–96–22, dated August 16, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 47–96–22, dated August 16, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 6, 1998.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8466 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–28–AD; Amendment 39–10431; AD 98–07–11]

RIN 2120–AA64

Airworthiness Directives; GKN Westland Helicopters Limited WG–30 Series 100 and 100–60 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to GKN Westland Helicopters Limited (Westland) WG–30 series 100 and 100–60 helicopters. This action requires an initial visual inspection and replacement, if necessary, of all main rotor head tie-bars. Thereafter, this AD requires, at intervals not to exceed 220 hours time-in-service (TIS), replacing each main rotor head tie-bar (tie-bar) with an airworthy tie-bar. This amendment is prompted by an accident on a similar model military helicopter in which a tie-bar failed; it is suspected that the military helicopter involved in the accident exceeded the power-off transient rotor speed limitation. This condition, if not corrected, could result in failure of a tie-bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective April 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW–28-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from GKN Westland Helicopters Limited, Customer Support Division, Yeovil, Somerset BA20 2YB, England, telephone (01935) 703884, fax (01935) 703905. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas, 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on Westland WG–30 series 100 and 100–60 helicopters. The CAA advises that when water gets into the blade sleeve it can cause bulging or swelling of a tie-bar that could result in failure of a tie-bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Westland has issued Westland Helicopters Service Bulletin (SB) No. W30–62–34 and W30–62–35, both dated November 29, 1995, which specify procedures for conditional, dimensional, and radiographic inspections and replacement, if necessary, of the tie-bars. The actions specified in these service bulletins are intended to prevent loss of a main rotor blade due to bulging or swelling of a tie-bar, tie-bar failure, and subsequent loss of control of the helicopter. The CAA classified these service bulletins as mandatory and issued CAA ADs 010–11–95 and 011–11-95, both dated January 31, 1996, in order to assure the continued airworthiness of these helicopters in the UK.

These helicopter models are manufactured in the UK and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Westland WG–30 series 100 and 100–60 helicopters of the same type design eligible for registration in the United States, this AD is being issued to prevent loss of a main rotor blade due to failure of a tie-bar which could result in subsequent loss of control of the helicopter. This AD requires an initial visual inspection and replacement, if necessary, of the tie-bars

and thereafter, at intervals not to exceed 220 hours TIS, replacement of each tie-bar with an airworthy tie-bar. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Westland series 100 and 100–60 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed in the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 25 work hours for the visual inspection and 25 work hours, if necessary, for the replacement of the tie-bars, at an average labor rate of $60 per work hour. Required parts would cost $17,600 per helicopter. Based on these figures, the cost impact of this AD would be $20,600 per helicopter, assuming that the tie-bars are replaced.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–28–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–07–11 GKN Westland Helicopters Limited: Amendment 39–10431. Docket No. 97–SW–28–AD.

Applicability: Westland 30 Series 100 and 100–60 helicopters with main rotor head and spider assemblies, part number (P/N) WG1369–0062-all dash numbers, and main rotor head assemblies, P/N WG3069–0011, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor tie-bar (tie-bar), loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, visually inspect all tie-bars for bulging or swelling in accordance with Steps 2(B)(1) through 2(B)(4) of the Accomplishment Instructions of Westland Helicopters Limited (Westland) Service Bulletin (SB) No. W30–62–34, dated November 29, 1995. Replace any unairworthy tie bar(s) with airworthy tie bar(s).

(b) At intervals not to exceed 220 hours time-in-service (TIS), replace each tie-bar with a zero-time airworthy tie-bar or an airworthy tie-bar which has been inspected in accordance with Westland SB No. W30–62–35, dated November 29, 1995, Annexe A through Annexe C.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with § § sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Westland SB No. W30–62–34 and SB No. W30–62–35, both dated November 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GKN Westland Helicopters Limited, Customer Support Division, Yeovil, Somerset BA20 2YB, England, telephone (01935) 703884, fax (01935) 703905. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 16, 1998.

Note 3: The subject of this AD is addressed in Civil Aviation Administration (United Kingdom) AD 010–11–95 and AD 011–11–95, both dated January 31, 1996.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8468 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 4

Appearances Before the Commission; Restrictions and Public Disclosure Requirements.

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to make more efficacious the procedures by which the General Counsel reaches determinations on requests by former employees for clearance to participate in Commission matters. The revised procedures are intended to provide for effective review of the propriety of a former employee's participation in a particular matter while reducing the paperwork and resources needed to dispose of clearance requests. These amendments also clarify the rule's terms and procedures, eliminate certain inconsistencies, and correct one provision.

EFFECTIVE DATE: These amendments are effective April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, 202–326–2426, or Laura D. Berger, 202–326–2471, Attorneys, Office of the General Counsel, FTC, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission is revising paragraph (b) of Commission Rule 4.1, 16 CFR 4.1, to shorten the time for determining a former employee's request for clearance to participate in a Commission matter from 15 to 10 business days, and to provide that either the General Counsel or the General Counsel's designee has the authority to make this determination. Shortening the waiting period from the present 15 business days to 10 business days is designed to benefit filers and their clients, as well as the Commission's ability to resolve administrative actions and investigations promptly.

In addition, the Commission is further revising Rule 4.1(b) to simplify its terms and requirements, to eliminate certain inconsistencies, and to correct one error. Finally, the Commission is modifying the exceptions to the rule in order to make them consistent with the provisions of 18 U.S.C. 207. The Commission also is amending paragraph (c) of the Rule slightly, to make it consistent with revised paragraph (b).

Apart from these revisions, the changes will affect internal procedures only, and are not intended to influence the outcomes of filings made under the Rules. Simplified internal processing procedures are designed to reduce the time and resources expended in disposing of the large number of clearance requests that are not problematic, while continuing to ensure the integrity of Commission investigations and proceedings.

The rule amendments relate solely to agency practice, and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

The submissions required by the amended rule do not generally involve the ''collection of information'' as that term is defined by the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520. Submission of a request for clearance to participate or a screening affidavit is ordinarily required only during the conduct of an administrative action or investigation involving a specific individual or entity. Such submissions are exempt from the coverage of the PRA. 5 CFR 1320.4(a)(2). To the limited extent that the rule could require a submission outside the context of an investigation or action involving a specific party, the information collection aspects of the rule have been cleared by the Office of Management and Budget and assigned OMB clearance no. 3084–0047.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 4.1 Appearances.

* * * * *

(b) *Restrictions as to former members and employees*—(1) *General Prohibition.* Except as provided in this section, or otherwise specifically authorized by the Commission, no former member or employee (''former employee'' or ''employee'') of the Commission may communicate to or appear before the Commission, as attorney or counsel, or otherwise assist or advise behind-the-scenes, regarding a formal or informal proceeding or investigation [1] (except that a former employee who is disqualified solely under paragraph (b)(1)(iv) of this section, is not prohibited from assisting or advising behind-the-scenes) if:

(i) The former employee participated personally and substantially on behalf of the Commission in the same proceeding or investigation in which the employee now intends to participate;

[1] It is important to note that a new ''proceeding or investigation'' may be considered the same matter as a seemingly separate ''proceeding or investigation'' that was pending during the former employee's tenure. This is because a ''proceeding or investigation'' may continue in another form or in part. In determining whether two matters are actually the same, the Commission will consider: the extent to which the matters involve the same or related facts, issues, confidential information and parties; the time elapsed; and the continuing existence of an important Federal interest. *See* 5 CFR 2637.201(c)(4). For example, where a former employee intends to participate in an investigation of compliance with a Commission order, submission of a request to reopen an order, or a proceeding with respect to reopening an order, the matter will be considered the same as the adjudicative proceeding or investigation that resulted in the order. A former employee who is uncertain whether the matter in which he seeks clearance to participate is wholly separate from any matter that was pending during his tenure should seek advice from the General Counsel or the General Counsel's designee before participating.

(ii) The participation would begin within two years after the termination of the former employee's service and, within a period of one year prior to the employee's termination, the proceeding or investigation was pending under the employee's official responsibility;

(iii) Nonpublic documents or information pertaining to the proceeding or investigation in question, and of the kind delineated in § 4.10(a), came to, or would be likely to have come to, the former employee's attention in the course of the employee's duties, and the employee left the Commission within the previous three years (unless Commission staff determines that the nature of the documents or information is such that no present advantage could thereby be derived); or

(iv) The former employee's participation would begin within one year after the employee's termination and, at the time of termination, the employee was a member of the Commission or a ''senior employee'' as defined in 18 U.S.C. 207(c).

Note: Former Commissioners and certain former ''senior'' employees who were appointed to those positions on or after January 20, 1993 may be subject to a five year ban on participation in Commission matters pursuant to Executive Order 12834 (58 FR 5911–5916, January 22, 1993), 3 CFR 1993 Comp., p. 580).

(2) *Clearance Request Required.* Any former employee, before participating in a Commission proceeding or investigation (*see* footnote 1), whether through an appearance before a Commission official or behind-the-scenes assistance, shall file with the Secretary a request for clearance to participate, containing the information listed in § 4.1(b)(4) if:

(i) The proceeding or investigation was pending in the Commission while the former employee served;

(ii) A proceeding or investigation from which such proceeding or investigation directly resulted was pending during the former employee's service; or

(iii) Nonpublic documents or information pertaining to the proceeding or investigation in question, and of the kind delineated in § 4.10(a), came to or would likely have come to the former employee's attention in the course of the employee's duties, and the employee left the Commission within the previous three years.

Note: This requirement applies even to a proceeding or investigation that had not yet been initiated formally when the former employee terminated employment, if the employee had learned nonpublic information relating to the subsequently initiated proceeding or investigation.

(3) *Exceptions.*

(i) Paragraphs (b)(1) and (2) of this section do not apply to:

(A) Making a pro se filing of any kind;

(B) Submitting a request or appeal under the Freedom of Information Act, the Privacy Act, or the Government in the Sunshine Act;

(C) Testifying under oath (except that a former employee who is subject to the restrictions contained in paragraph (b)(1)(i) of this section with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any person other than the United States in that same matter);

(D) Submitting a statement required to be made under penalty of perjury; or

(E) Appearing on behalf of the United States.

(ii) With the exception of subparagraph (b)(1)(iv), paragraphs (b)(1) and (2) of this section do not apply to participating in a Commission rulemaking proceeding, including submitting comments on a matter on which the Commission has invited public comment.

(iii) Paragraph (b)(1)(iv) of this section does not apply to submitting a statement based on the former employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided by law or by § 4.5 for witnesses.

(iv) Paragraph (b)(2) of this section does not apply to filing a premerger notification form or participating in subsequent events concerning compliance or noncompliance with Section 7A of the Clayton Act, 15 U.S.C. 18a, or any regulation issued under that section.

(4) *Request Contents.* Clearance requests filed pursuant to § 4.1(b)(2) shall contain:

(i) The name and matter number (if known) of the proceeding or investigation in question;

(ii) A description of the contemplated participation;

(iii) The name of the Commission office(s) or division(s) in which the former employee was employed and the position(s) the employee occupied;

(iv) A statement whether, while employed by the Commission, the former employee participated in any proceeding or investigation concerning the same company, individual, or industry currently involved in the matter in question;

(v) A certification that while employed by the Commission, the employee never participated personally and substantially in the same matter or proceeding;

(vi) If the employee's Commission employment terminated within the past two years, a certification that the matter was not pending under the employee's official responsibility during any part of the one year before the employee's termination;

(vii) If the employee's Commission employment terminated within the past three years, either a declaration that nonpublic documents or information pertaining to the proceeding or investigation in question, and of the kind delineated in § 4.10(a), never came to the employee's attention, or a description of why the employee believes that such nonpublic documents or information could not confer a present advantage to the employee or to the employee's client in the proceeding or investigation in question; and

(viii) A certification that the employee has read, and understands, both the criminal conflict of interest law on post-employment activities (18 U.S.C. 207) and this Rule in their entirety.

(5) *Definitions.* The following definitions apply for purposes of this section:

(i) *Behind-the-scenes* participation includes any form of professional consultation, assistance, or advice to anyone about the proceeding or investigation in question, whether formal or informal, oral or written, direct or indirect.

(ii) *Communicate to or appear before* means making any oral or written communication to, or any formal or informal appearance before, the Commission or any of its members or employees on behalf of any person (except the United States) with the intent to influence.

(iii) *Directly resulted from* means that the proceeding or investigation in question emanated from an earlier phase of the same proceeding or investigation or from a directly linked, antecedent investigation. The existence of some attenuated connection between a proceeding or investigation that was pending during the requester's tenure and the proceeding or investigation in question does not constitute a direct result.

(iv) *Pending under the employee's official responsibility* means that the former employee had the direct administrative or operating authority to approve, disapprove, or otherwise direct official actions in the proceeding or investigation, irrespective of whether the employee's authority was intermediate or final, and whether it was exercisable alone or only in conjunction with others.

(v) *Personal and substantial participation.* A former employee

participated in the proceeding or investigation personally if the employee either participated directly or directed a subordinate in doing so. The employee participated substantially if the involvement was significant to the matter or reasonably appeared to be significant. A series of peripheral involvements may be considered insubstantial, while a single act of approving or participating in a critical step may be considered substantial.

(vi) *Present advantage.* Whether exposure to nonpublic information about the proceeding or investigation could confer a present advantage to a former employee will be analyzed and determined on a case-by-case basis. Relevant factors include, *inter alia,* the nature and age of the information, its relation and current importance to the proceeding or investigation in question, and the amount of time that has passed since the employee left the Commission.

(vii) *Proceeding or investigation* shall be interpreted broadly and includes an adjudicative or other proceeding; the consideration of an application; a request for a ruling or other determination; a contract; a claim; a controversy; an investigation; or an interpretive ruling. Proceeding or investigation does not include a rulemaking proceeding.

(6) *Advice as to Whether Clearance Request is Required.* A former employee may ask the General Counsel, either orally or in writing, whether the employee is required to file a request for clearance to participate in a Commission matter pursuant to paragraph (b)(2) of this section. The General Counsel, or the General Counsel's designee, will make any such determination within three business days.

(7) *Deadline for Determining Clearance Requests.* By the close of the tenth business day after the date on which the clearance request is filed, the General Counsel, or the General Counsel's designee, will notify the requester either that:

(i) the request for clearance has been granted;

(ii) the General Counsel or the General Counsel's designee has decided to recommend that the Commission prohibit the requester's participation; or

(iii) the General Counsel or the General Counsel's designee is, for good cause, extending the period for reaching a determination on the request by up to an additional ten business days.

(8) *Participation of Partners or Associates of Former Employees.*

(i) If a former employee is prohibited from participating in a proceeding or investigation by virtue of having worked on the matter personally and substantially while a Commission employee, no partner or legal or business associate of that individual may participate except after filing with the Secretary of the Commission an affidavit attesting that:

(A) The former employee will not participate in the proceeding or investigation in any way, directly or indirectly (and describing how the former employee will be screened from participating);

(B) The former employee will not share in any fees resulting from the participation;

(C) Everyone who intends to participate is aware of the requirement that the former employee be screened;

(D) The client(s) have been informed; and

(E) The matter was not brought to the participant(s) through the active solicitation of the former employee.

(ii) If the Commission finds that the screening measures being taken are unsatisfactory or that the matter was brought to the participant(s) through the active solicitation of the former employee, the Commission will notify the participant(s) to cease the representation immediately.

(9) *Effect on Other Standards.* The restrictions and procedures in this section are intended to apply in lieu of restrictions and procedures that may be adopted by any state or jurisdiction, insofar as such restrictions and procedures apply to appearances or participation in Commission proceedings or investigations. Nothing in this section supersedes other standards of conduct applicable under paragraph (e) of this section. Requests for advice about this section, or about any matter related to other applicable rules and standards of ethical conduct, shall be directed to the Office of the General Counsel.

(c) *Public Disclosure.* Any request for clearance filed by a former member or employee pursuant to this section, as well as any written response, are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter. Information identifying the subject of a nonpublic Commission investigation will be redacted from any request for clearance or other document before it is placed on the public record.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–8479 Filed 3–31–98; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8765]

RIN 1545–AL24; 1545–AS68

Change From Dollar Approximate Separate Transactions Method of Accounting (DASTM) to the Profit and Loss Method of Accounting/Change From the Profit and Loss Method to DASTM; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8765) which were published in the **Federal Register** on Thursday, March 5, 1998 (63 FR 10772), relating to adjustments required when a qualified business unit (QBU) that used the profit and loss method of accounting (P&L) in a post-1986 year begins to use the dollar approximate separate transaction method of accounting (DASTM) and adjustments required when a QBU that used DASTM begins using P&L.

DATES: This correction is effective April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Wiener of the Office of Chief Counsel (International), (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 985 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8765) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8765), which was the subject of FR Doc. 98–5470, is corrected as follows:

§ 1.985–1 [Corrected]

1. On page 10774, column 2, amendatory instruction 1. under Par. 2. is corrected to read ''1. Paragraph (b)(2)(ii)(C) is amended by designating the text following the heading as paragraph (b)(2)(ii)(C)(*1*) and revising it and by adding a new paragraph (b)(2)(ii)(C)(*2*).''.

2. On page 10774, column 2, in § 1.985–1, correct paragraph (b)(2)(ii)(C)

by adding a paragraph designation and heading for paragraph (b)(2)(ii)(C)(*1*) and by adding a new paragraph (b)(2)(ii)(C)(*2*) to read as follows:

§ 1.985–1 Functional currency.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) * * * (*1*) *In general.* * * *

(*2*) *Effective date.* This paragraph (b)(2)(ii)(C) applies to taxable years beginning after April 6, 1998. However, a taxpayer may choose to apply this paragraph (b)(2)(ii)(C) to all open years after December 31, 1986, provided each person, and each QBU branch of a person, that is related (within the meaning of § 1.985–2(d)(3)) also applies to this paragraph (b)(2)(ii)(C).

* * * * *

§ 1.985–7 [Corrected]

3. On page 10775, column 2, § 1.985–7 (b)(3), in the last three lines, the language ''had translated its assets and liabilities under § 1.985–3 during the look-back period.'' is corrected to read ''had translated its assets and liabilities acquired and incurred during the look-back period under § 1.985–3.''.

4. On page 10776, column 2, § 1.985–7 (c)(5), line 17, the language ''of change.) For purposes of section 960,'' is corrected to read ''of change). For purposes of section 960,''.

5. On page 10776, column 2, § 1.985–7 (c)(5), the last line, the language ''section.)'' is corrected to read ''section).''.

6. On page 10776, column 3, § 1.985–7 (d)(5), the last two lines, the language ''assets and liabilities under § 1.985–3 during the look-back period.'' is corrected to read ''assets and liabilities acquired and incurred during the look-back period under § 1.985–3.''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–8321 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300629; FRL–5778–9]

RIN 2070–AB78

Imidacloprid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide imidacloprid and its metabolites in or on cucurbits at 0.2 part per million (ppm) for an additional 1–year period, to March 31, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cucurbits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective April 1, 1998. Objections and requests for hearings must be received by EPA, on or before June 1, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300629], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number [OPP–300629] and submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300629]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, elephone number, and e-mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 19, 1997 (62 FR 12953) (FRL–5594–2), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), EPA was establishing a time-limited tolerance for the residues of imidacloprid and its metabolites in or on cucurbits at 0.2 ppm, with an expiration date of March 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. However, in the **Federal Register** of April 25, 1997 (62 FR 20117) (FRL–5599–5), EPA issued a regulation extending the expiration date for tolerances of indirect or inadvertent residues of imidacloprid and its metabolites on Vegetable cucurbits. Inadvertently, in the revision of § 180.472, the time-limited tolerance for Vegetable cucurbits as added on March 19, 1997 under section 18 of FIFRA, was omitted. With this regulation, EPA is re-establishing the time-limited tolerance and is also extending the expiration date from March 31, 1998 to March 31, 1999.

EPA received a request from the California Department of Pesticide Regulation to extend the use of imidacloprid on cucurbits for this year's growing season due to the silverleaf whitefly being a recently-introduced pest in California, which can have devastating effects on the cucurbit crop, and is resistant to registered alternatives. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of imidacloprid on cucurbits for control of silverleaf whitefly in cucurbits.

EPA assessed the potential risks presented by residues of imidacloprid in or on cucurbits. In doing so, EPA

considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of March 19, 1997 (62 FR 12953) (FRL–5594–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. Although this tolerance will expire and is revoked on March 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 1, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300629. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations asrequired by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, in the table to paragraph (b), by adding an entry for ''Vegetable, cucurbits,'' to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* *	* * *	
Vegetables, cucurbits	0.2	3/31/99

* * * * *

[FR Doc. 98–8643 Filed 3–30–98; 1:15 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300630; FRL–5779–1]
RIN 2070–AB78

Bifenthrin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide bifenthrin and its metabolites in or on cucurbits at 1.0 part per million (ppm) for an additional one–year period, to April 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cucurbits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective April 1, 1998. Objections and requests for hearings must be received by EPA, on or before June 1, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300630, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300630, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9356; e-mail:beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of June 6, 1997 (62 FR 30996) (FRL–5719–3), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of bifenthrin and its metabolites in or on cucurbits at 1.0 ppm, with an expiration date of April 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of bifenthrin on cucurbits for this year growing season due to the silverleaf whitefly being a recently-introduced pest in California, which can have devastating effects on the cucurbit crop, and is resistant to registered alternatives. An exemption has also been issued for another material, imidacloprid, to provide early season control. However, bifenthrin is also needed for control later in the season. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of bifenthrin on cucurbits for control of silverleaf whitefly in cucurbits.

EPA assessed the potential risks presented by residues of bifenthrin in or on cucurbits. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided

that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of June 6, 1997 (62 FR 30996) (FRL–5719–3). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one-year period. Although this tolerance will expire and is revoked on April 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 1, 1998, this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300630. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: March 19, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 -- [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.442 [Amended]

2. In § 180.442, by amending the tolerance listed for ''Vegetables, Cucurbits'' in the table under paragraph (b) by changing the expiration date ''4/30/98'' to read ''4/30/99''.

[FR Doc. 98–8216 Filed 3–31–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPPTS–42188B; FRL–5750–4]

RIN 2070–AD17

Revisions to Reporting Regulations Under TSCA Section 8(d)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: As a part of EPA's 1994 regulatory review, the reporting requirements under section 8(d) of the Toxic Substances Control Act (TSCA) were reviewed for burden reduction opportunities. As a result of this review, EPA is revising its TSCA section 8(d) health and safety data reporting rule that requires chemical manufacturers (including importers) and processors of listed substances and listed mixtures to report unpublished health and safety studies. Revisions include changes to the categories of persons required to report, the types of studies and the grade/purity of the substance for which reporting is required, the reporting period, and the measure of adequacy of the file search needed to comply with the requirements of TSCA section 8(d). Additionally, EPA is amending the sunset date for all chemical substances and mixtures listed in 40 CFR 716.120, for which reporting is currently required. Furthermore, because of this change in the reporting period, EPA will no longer conduct a biennial review of the chemical substances and mixtures listed in 40 CFR 716.120. The Agency's goal is to streamline the reporting requirements while maintaining the ability to protect human health and the environment through the collection of data regarding potential risks.

DATES: *Effective date*: June 30, 1998. *Comment date*: All comments must be received by EPA by May 1, 1998. If EPA receives adverse comments to this direct final rule by May 1, 1998, EPA will issue a notice to withdraw this direct final rule and seek comment on the issue raised. After considering the comments submitted, EPA will respond to comments received in a final rule that is published in the **Federal Register**. If no adverse comments to this direct final rule are received, this rule will become effective as a final rule on the date specified above.

ADDRESSES: Each comment must bear the docket control number OPPTS–42188B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, USEPA, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For specific information regarding this rule, contact Keith Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–8157; fax: (202) 260–1096; e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/TOX/).

Fax on Demand

Using a faxphone call 202–401–0527 and select item 4301 for a copy of this document and select item 4057 for a copy of 40 CFR 716.120 revised in its entirety.

Regulated persons. Potentially regulated persons are those that manufacture (including import) or process chemical substances and mixtures. Regulated categories and entities include:

Category	Examples of regulated persons
Industry	Chemical manufacturers (including importers),chemical processors, and petroleum refiners.

This table is not exhaustive, but lists the types of persons that could potentially be regulated by this action. Other types of persons may also be regulated. To determine whether a person is regulated by this action, carefully examine the applicability criteria in 40 CFR part 716. If you have questions regarding the applicability of this action to a particular person, consult the person listed under ''FOR FURTHER INFORMATION CONTACT'' at the beginning of this document.

EPA believes this revised rule will significantly decrease the reporting burden by eliminating many of the file

searches conducted in compliance with TSCA section 8(d), eliminating many of the reporting systems which have been designed to track TSCA section 8(d) chemical substances, and eliminating the submission of data that are typically unnecessary to determine data needs.

EPA is publishing this action as a direct final rule, without a proposal and prior opportunity for comment, because the action substantially reduces existing reporting requirements under TSCA section 8(d), the Agency views the action as noncontroversial, and the Agency anticipates there will be no significant adverse comments. EPA believes that there will be no adverse reaction to this action because it substantially reduces the reporting burden associated with TSCA section 8(d) Health and Safety Data reporting requirements while still providing EPA with the needed data. In addition, EPA discussed these changes with a majority of the information providers and users, and received a favorable response. It is in the interest of the regulated community and EPA to avoid delaying the implementation of this action due to the burden reduction that would be achieved from the time it becomes effective as a final rule. The shared interest of EPA and the regulated community in this action indicates that these revisions will be received favorably and without adverse comment. Therefore, notice and public procedure are unnecessary prior to the publication of this direct final rule.

Nonetheless, adverse comments may be submitted on this action as directed under ''ADDRESSES'' at the beginning of this document. If EPA receives adverse comments, this direct final rule will be withdrawn before the effective date through publication of a document in the **Federal Register**. If this direct final rule is withdrawn, any public comments received will be addressed in a subsequent proposed rule. Any parties interested in commenting on this action must do so at this time. If no adverse comments are received, the public is advised that this action will become effective on June 30, 1998.

I. Introduction

The TSCA section 8(d) Health and Safety Data Reporting rule (40 CFR part 716) sets forth requirements for the submission of lists and copies of health and safety studies on chemical substances and mixtures selected for priority consideration for testing rules under section 4(a) of TSCA and on other substances and mixtures for which EPA requires health and safety information to identify data needs and/or to support chemical risk assessment/management activities. The rule requires manufacturers (including importers) and processors to submit to EPA unpublished health and safety studies on the substances and mixtures listed at 40 CFR 716.120. EPA is revising the categories of persons required to report, the types of studies and the purity/grade of the substance on which studies were performed for which reporting is required, the reporting period, and the measure of adequacy of the file search needed to comply with TSCA section 8(d).

A. Background

On October 11, 1976, the President signed the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, to ''regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances * * *.'' Section 8(d) of TSCA, 15 U.S.C. 2607(d), directs the EPA Administrator to promulgate rules that require the submission of lists of health and safety studies and copies of the studies pertaining to chemical substances and mixtures in commerce. This section of TSCA requires ''any person who manufactures (includes imports), processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture'' to submit to EPA lists and copies of health and safety studies available to them. The regulations implementing TSCA section 8(d) are found at 40 CFR part 716.

Under the current section 8(d) regulations, EPA requires the submission of unpublished health and safety studies on specified chemicals from manufacturers (including importers) and processors of the chemicals. Studies of human health and environmental effects, including studies of exposures to people and the environment, are the fundamental ingredients of any assessment of chemical risk. EPA requires reporting under these regulations for specific chemicals that are under investigation either in the early stages of risk assessment or when action to control exposure is being considered.

As TSCA section 8(d) rules are promulgated, chemicals and mixtures are added and subtracted from the list in 40 CFR 716.120. The process by which these modifications are made has evolved over the years. Particularly significant changes in the process described at 40 CFR part 716 occurred on October 4, 1982, when a rule (47 FR 38780) was published that set up a process for adding chemicals recommended for testing by the TSCA Interagency Testing Committee (ITC) without the opportunity for prior notice and comment (40 CFR 716.105(b)). For such chemicals, amendments made to 40 CFR 716.120, the list of chemicals subject to section 8(d) reporting requirements, become effective as direct final rules thirty days after publication of a document in the **Federal Register**.

B. Role of the TSCA Interagency Testing Committee (ITC)

The TSCA Interagency Testing Committee (ITC) is an independent committee that was created in 1976 under section 4(e) of TSCA, 15 U.S.C. 2603(e), to make recommendations to the Agency about chemicals for which data are needed. The statute specifies that the ITC consists of eight statutory members, appointed by and drawn from the following organizations: Environmental Protection Agency (EPA), Department of Labor (DOL) (appointee is drawn from the Occupational Safety and Health Administration (OSHA)), Council on Environmental Quality (CEQ), National Institute for Occupational Safety and Health (NIOSH), National Institute of Environmental Health Sciences (NIEHS), National Cancer Institute (NCI), National Science Foundation (NSF), and the Department of Commerce (DOC). Currently, eight other Federal Agency members are participating on a liaison basis: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Department of Agriculture (USDA), Department of Defense (DOD), Food and Drug Administration (FDA), Department of the Interior (DOI), National Library of Medicine (NLM), and the National Toxicology Program (NTP).

The chemical substances and mixtures recommended by the ITC to the EPA for priority consideration for proposed test rules under TSCA section 4(a) comprise a list called the Priority List. Chemical substances and mixtures may be recommended to be added to the Priority List based on the ITC's consideration of factors such as production volume, exposure, and availability of data regarding health and environmental effects. When the ITC recommends chemicals for testing, EPA issues amendments in the **Federal Register** to add to the list of recommended chemicals subject to reporting requirements under TSCA section 8(a) (40 CFR 712.30) and TSCA section 8(d) (40 CFR 716.120).

The ITC provides an existing infrastructure to rapidly prioritize inter-Agency data needs on many industrial chemicals. The ITC has the authority to

designate chemical substances and mixtures on the Priority List with respect to which the ITC determines the Administrator should initiate rulemaking proceedings pursuant to TSCA section 4(a). Within 12 months of the date of first inclusion on the Priority List of a chemical substance or mixture designated by the ITC, TSCA directs the Administrator to initiate rulemaking proceedings or publish in the **Federal Register** the reasons for not doing so.

The ITC recommends chemicals to the Administrator to meet focused Federal data needs under TSCA section 4(e). EPA plans to focus its TSCA section 8(d) reporting requirements to reduce the resources that are consumed to retrieve and submit section 8(d) studies (on the part of industry), log-in, store and index studies (on the part of EPA), and summarize and review studies (on the part of ITC). Further, in its 40th Report to the Administrator, the ITC has recommended to EPA that procedures be established by the Agency that offer industry opportunities to submit voluntarily the types of data required under TSCA section 8(a) and 8(d) and establish cooperative efforts with the ITC to support ITC efforts in evaluating chemicals for testing under TSCA (62 FR 30580, June 4, 1997).

C. The Need for Change

As one part of its regulatory reinvention initiative, EPA has reviewed its reporting requirements under section 8(d) of TSCA. The Agency's goal is to streamline the reporting requirements while maintaining the availability of the data or its ability to acquire the data necessary to protect human health and the environment. The current opportunity to revise the section 8(d) rule is the result of the ''regulatory reform'' evaluation efforts undertaken as a result of a Presidential regulatory reform initiative of March 16, 1995 entitled ''Reinventing Environmental Regulation.'' The rationales for reinvention activities are manifold, however, a central principle is that ''[r]egulation must be designed to achieve environmental goals in a manner that minimizes costs to individuals, businesses, and other levels of government.'' (Ref. 1)

Over the years, EPA has received a variety of comments concerning the implementation of section 8(d). Extensive comments have been received on many topics, including the definition of the term ''processor,'' reporting requirements for waste streams, and reporting requirements for modeling and monitoring information. In December 1987, the Chemical Manufacturers Association (CMA) developed a comprehensive report (Ref. 2) suggesting a variety of revisions and, in June 1996, provided the following list of suggested revisions in descending order of importance to CMA and its members (Ref. 3):

(1) Reduce ten-year reporting period to one year for section 8(d) related information.

(2) Revise reporting of monitoring and modeling studies.

(3) Revise processor reporting requirements.

(4) Reduce reporting of studies on mixtures.

(5) Exempt reporting requirements for waste streams.

(6) Eliminate study initiation reporting.

(7) Clarify file search issue.

(8) Clarify guidance on reporting of international studies.

(9) Establish a voluntary call-in prior to issuing TSCA section 8(d) reporting rules.

(10) Establish an electronic up-to-date list of TSCA section 8(d) chemicals by CAS registry number.

(11) Exclude health and safety studies managed by other environmental regulations to avoid duplicate reporting.

(12) Eliminate reporting of quantitative risk assessment and structure-activity analysis.

(13) Eliminate less useful studies.

(14) Provide for alternative forms of required reporting.

D. The Public Meeting

On August 23, 1996, EPA published a **Federal Register** notice (61 FR 43546) inviting all interested parties to attend a public meeting in Washington, DC on September 12, 1996, to discuss possible amendments to the TSCA section 8(d) rule. The meeting was well attended with over 65 representatives of manufacturers, processors, trade associations, and other interested parties. Each of the above issues was discussed and time for comments was provided. At the meeting, EPA requested that comments on the above or any other issues be submitted in writing for consideration by the Agency. Additional comments were submitted, especially relating to the issue of definition of the term ''processor'' and whether processors should be required to submit health and safety data under section 8(d) of TSCA. The comments received from all sources have been analyzed and evaluated (Ref. 4) and the general issues are addressed in Unit II. of this document.

II. Revisions to TSCA Section 8(d) Regulations

A. Background

TSCA provides EPA with a variety of methods by which it can acquire chemical substance and mixture data needed to protect human health and the environment. Section 8(d) provides EPA with the authority to promulgate rules requiring the submission of studies that are initiated by the submitter, as well as studies conducted by the submitter in the past and studies the submitter knows of or may reasonably ascertain.

A chemical substance or mixture that is not subject to an section 8(d) rule may still be subject to other TSCA reporting requirements. Section 8(e) requires manufacturers, processors and distributors to report any information regarding a chemical substance or mixture which reasonably supports the conclusion that the substance or mixture presents a substantial risk of injury to health or the environment. Studies that are not otherwise required to be reported under section 8(e) are typically the kind of studies required to be reported under section 8(d). Data relating to chemical substances and mixtures that are not reportable under TSCA section 8 may be obtained by EPA through the promulgation of a test rule under section 4 of TSCA. Once findings are made by EPA under section 4(a), EPA must promulgate a rule requiring the testing of chemical substances and mixtures to develop health and environmental effects data.

B. Persons Who Must Report

Under the current TSCA section 8(d) regulations, any person who manufacturers (including imports) or processes a chemical substance or mixture listed under 40 CFR 716.120 must submit to EPA copies of available health and safety studies upon request by EPA. Currently, there is no category or sector limitation on reporting. By this rulemaking, reporting of health and safety studies would be required only by manufacturers (including importers) who fall under the North American Industry Classification System (NAICS) in effect as of January 1, 1997, replacing the 1987 Standard Industrial Classification ((SIC); 62 FR 17288, April 9, 1997), Subsector 325 (chemical manufacturing and allied products) and Industry Group 32411 (petroleum refiners), unless otherwise required in a specific rule. EPA believes that this narrowing of the scope of reporting, on a routine basis, will reduce the burden imposed on industry to comply with TSCA section 8(d), while still providing EPA and other Federal agencies with the

data necessary to protect human health and the environment.

A number of organizations have suggested that the definition of the term ''processor'' under TSCA section 8(d) should be reevaluated. Commentors suggested two options:

(1) Revise the definition to focus reporting requirements on manufacturers (including importers), rather than on ''chemical users,'' who buy chemicals and mixtures and then use them to manufacture non-chemical products, such as articles.

(2) Use appropriate Standard Industrial Classification (SIC) codes (replaced by the North American Industry Classification System, NAICS, in 1997).

At the present time, the term ''processor'' may be broadly defined to include a far larger audience than intended on a routine basis.

EPA has analyzed the approximately 300 submitters of the roughly 11,000 submissions of TSCA section 8(d) information received to date, and has categorized them by submitter type (Ref. 4). The vast majority of submitters are individual chemical manufacturers or associations representing chemical manufacturers falling under NAICS Subsector 325 and Industry Group 32411, which are heavily concentrated on the chemical, allied products, and petroleum refining industries. Examination of some of the processor submissions indicates very limited data have been submitted by them and typically only in the form of industrial hygiene/monitoring data. Thus, narrowing the overall scope of persons who must report on a routine basis would likely have a negligible impact on the type and comprehensiveness of the information submitted under section 8(d). The rule's focus on those entities that actually submit studies ensures that virtually all of the data that have been reported in the past will continue to be reported. Health and safety data submitted under section 8(d) are typically those studies that are not otherwise reportable under section 8(e), the ''substantial risk'' information reporting provision of TSCA. Further, studies reportable under section 8(e) must be submitted within a specific time frame by a broader range of persons, i.e., manufacturers, importers, processors, and distributors.

In a specific section 8(d) rule, EPA may require reporting of health and safety studies from all manufacturers (including importers) and processors of a chemical substance. In this way, EPA reserves the ability to require more information from a much wider audience in exceptional circumstances, while reducing the burden to industry on a routine basis.

C. Reporting Period

The reporting period for health and safety studies under TSCA section 8(d) is currently 60 days for existing data, and 10 years for new data, after the effective date on which a listed chemical substance or listed mixture is added to 40 CFR 716.120, unless the listed substance or listed mixture is removed from 40 CFR 716.120 prior to the lapse of the standard reporting period. EPA is revising 40 CFR 716.65, Reporting period, to only require a standard one-time reporting, which will include the requirement that all existing studies be reported within 60 days of the 40 CFR 716.120 listing, instead of the present 10 year reporting requirement. EPA believes this will provide a significant burden reduction for industry while having little effect on the availability of data to EPA and the ITC (Refs. 5 and 6).

When a substance from the TSCA section 4(e) Priority List is listed at 40 CFR 716.120, existing studies are required to be reported within 60 days of the listing, then the ITC examines the submitted data, usually within a year, to see if test data are already available in the areas of concern. The ITC has only rarely used data that have been submitted after the first year. Once the ITC recommends a chemical for testing, EPA may write a rule requiring testing or obtain the test data through specific enforceable consent agreements (ECA) with individual companies or groups of companies who volunteer to conduct the needed testing. This may take one to several years after the initial 40 CFR 716.120 listing. Although it is important for EPA to know about any testing initiated after the first year, EPA expects this information to still be forthcoming to EPA in a timely manner. Industry groups subject to a test rule, or with which EPA is negotiating an ECA, are likely to be knowledgeable about any relevant testing that is underway or will in fact be the ones conducting the testing.

Examination of the EPA's Toxic Substances Control Act Test Submissions (TSCATS) database (Ref. 4) indicates that most of the section 8(d) submissions are made shortly after the initial listing of a chemical substance. Any new studies that offer reasonable support for a conclusion of substantial risk, would still be required to be submitted immediately under TSCA section 8(e). In addition, many companies submit to EPA other new studies on a ''For Your Information'' (FYI) basis. The present revisions to the rule leave section 8(d) as the primary mechanism to obtain older studies, not new studies, and require that industry track the chemical for 60 days to make sure that any data that should be submitted under section 8(d) are collected and transmitted to EPA, within this new time frame. Should this direct final rule become effective, EPA will sunset all current reporting requirements for all chemicals listed at 40 CFR 716.120 for which reporting is currently required, except for those chemicals about which EPA was notified that a study had been initiated or is underway. For those chemicals, reporting is required until receipt of the final report is received by EPA. At the present time, the 60–day reporting period for all chemicals and mixtures listed at 40 CFR 716.120 has elapsed. Experience has shown prospective reporting to be very limited and therefore, it is likely that EPA has received all relevant data except for chemicals for which EPA has received notice of studies initiated during the initial 60–day period or those studies underway at that time.

D. Initiated Studies

The existing regulations at 40 CFR 716.35(a)(2) and 40 CFR 716.60(b)(1) require that EPA be notified within 30 days about studies initiated during the current 10–year reporting period and that the Agency be provided with information including the date on which the study was commenced, the purpose of the study, the types of data to be collected, the anticipated date of completion, and the name and address of the laboratory conducting the study. EPA is revising 40 CFR 716.65 to only require notification of study initiation that occurs during the 60–day reporting period. EPA believes that this revision will reduce the burden imposed on industry without reducing the data available to EPA and other Federal agencies to protect human health and the environment.

Several comments (Ref. 4) received in response to the public meeting held on September 12, 1996, have suggested that for short-term toxicity studies, any notification is of little value because within a short time the final versions of these studies would be submitted. It was also suggested that it would require considerable effort to track the initiation of other types of studies, such as monitoring studies. In addition, it was suggested by some industry groups that it would be to their benefit to voluntarily notify EPA of these planned studies in order to ensure the completeness of data known to EPA, as

the Agency will make decisions on required testing of a chemical substance or mixture under section 4 of TSCA based upon the data available.

Historically, few studies have been initiated during the TSCA section 8(d) reporting period. Thus, the revisions made in this rulemaking should result in a reduction in burden related to reporting by industry and in burden of reviewing by EPA. Persons who are subject to the rule under 40 CFR 716.35 (a)(2) or (a)(3) and who have submitted to EPA lists of ongoing or initiated studies under 40 CFR 716.35 (a)(1) or (a)(2) must still submit the final report of the study within 30 days after its completion regardless of the study's completion date.

E. Studies to be Reported

A present general requirement of 40 CFR part 716 is that all health and safety data available on a listed chemical substance or listed mixture must be reported when requested by EPA. EPA is narrowing the focus of the reporting requirements to specifically identify data needs on listed chemical substances or listed mixtures which meet or exceed certain grade/purity requirements. EPA believes that this approach reduces the amount of routine reporting of health effects studies and mixture studies which are in many cases of little value in Agency and ITC decision making.

Following the September 12, 1996, public meeting, EPA met with the ITC to discuss potential revisions to the Agency's regulations under TSCA section 8(d). The ITC recommended that the Agency focus its needs for section 8(d) data to reduce the resources that are spent by: industry to submit section 8(d) studies, EPA to computerize and store studies, and ITC to review studies. In order to facilitate such focused requests for information, EPA will require reporting of studies on particular effects of a chemical recommended by the ITC.

In order to facilitate the identification of data needs, the EPA will specify the type(s) of health and safety data needed by the ITC (see the following table for sample of effects data; environmental fate and exposure data may also be requested by the ITC). By being as specific as possible in identifying data needs, EPA will allow some companies that have indexed their health and safety studies to quickly identify relevant information for submission. Also, there may be some instances when the ITC cannot specifically identify the type of health and safety data needed (e.g., when a chemical has high exposure and little toxicity data). In such a situation, the reporting requirement may be significantly broader in scope. In all cases, the ITC will provide the rationale to EPA for its requests for studies of interest.

EPA will also specify the chemical grade/purity for which reporting is required. If studies meeting the EPA's chemical/grade purity specifications are not reported, the ITC may consider requesting studies on mixtures containing the recommended chemical, and EPA will reserve the ability to require that mixtures containing a listed chemical substance are subject to reporting under a specific TSCA section 8(d) rule. In the past, the ITC has typically only reviewed studies on mixtures if there were no available studies on the relatively pure chemical. The reduction in the routine reporting of studies on mixtures that would occur upon promulgation of this direct final rule should provide significant burden relief to industry, not because of the quantity of studies that are typically reported on mixtures, but because of the difficulty in identifying the mixtures that contain a listed substance. By no longer routinely requesting mixture studies, EPA will expend fewer resources computerizing and storing studies and ITC will spend less time reviewing studies that are in many cases of little value in Agency and ITC decision-making.

The following table is a hypothetical example of the types of existing studies for which EPA may be interested in obtaining for a chemical or mixture which meets or exceeds certain grade/purity criteria. This table should not be interpreted as setting forth future reporting requirements for a given chemical substance or mixture; rather it is a sample of the type of table which could be printed in the **Federal Register** setting forth certain identified data needs necessary for risk characterization for a specific chemical substance or mixture meeting specified grade/purity criteria in a new section of rules issued under section 8(d). Data needs and grade/purity would be indicated in the appropriate boxes. Data needs may include health, ecological, and/or environmental fate studies. A particular organism (e.g., rat) or route of exposure (e.g., inhalation) may provide the most relevant data for decision-making purposes, therefore, identification of a particular test species or route of exposure will be made where applicable.

Examples of Health, Ecological, and/or Environmental Effects Studies Which Can Be Requested Under TSCA Section 8(d)

Chemical name	CAS registry no.	Grade/purity of test substance	Study types	Test species	Route of exposure
1,chemical name	xxx–xx–x	technical grade or better (XX%).	HE[1]/subchronic EE[2]/acute toxicity EF[3]/hydrolysis	Mammals Fish-freshwater na[4]	Dermal/oral na na
2,chemical name	xxx–xx–x	99.9%	EE/reproductive toxicity	Fish-Marine	na
3,chemical name	xxx–xx–x	mixtures 75% or greater	EF/octanol Water partition Coefficient	na	na

[1] HE, health effects.
[2] EE, ecological effects.
[3] EF, environmental fate.
[4] na, not applicable.

F. Adequate File Search

The former approach for reporting TSCA section 8(d) studies requires searching all ''active'' files or records kept by the company personnel responsible for keeping such records or providing advice on health and environmental effects of chemicals. In this rulemaking, EPA is limiting 40 CFR 716.25 to require file searches only for reportable information dated on or after January 1, 1977, the effective date of TSCA, unless a subsequent section 8(d) rule requires a more extensive search.

EPA believes that this revision will also result in an additional reduction in burden to both industry and EPA.

Over the years, commenters have suggested that file searches have resulted in considerable burden due to the reporting of some rather old studies which are less likely to meet current needs due to changing protocols to achieve state-of-the-art science and lack of application of Good Laboratory Practice Standards (GLPS). The GLPS were promulgated in 1978 (Food and Drug Administration) and the mid 1980's (EPA, 40 CFR part 792). For example, in earlier studies, fewer animals were used for oncogenicity, developmental, reproductive, and subchronic studies; monitoring of animals' health status by breeders was less rigorous; and chemical analytical methods were not as sensitive. However, limiting reporting of studies to only a certain time frame preceding the date of the listing of the substance could result in useful studies not being reported to EPA and ITC. Consequently, EPA would reserve the right to request such studies through a more extensive search.

EPA believes that in all but exceptional circumstances, establishing a single date after which all files should be searched will remove the confusion that currently exists with respect to ''active'' and ''retired'' files. EPA will continue to accept the submissions of older studies that may meet the regulatory needs of EPA and ITC, but these would be submitted on a voluntary rather than obligatory basis by industry, unless a rule makes submission mandatory. However, because studies conducted prior to the effective date of TSCA may be the only source of relevant data on a chemical, EPA may, under certain circumstances, require file searches for reportable information dated before January 1, 1977. Industry will have a considerable incentive to voluntarily submit older ''good'' studies, because the alternative is that EPA may require testing under section 4 of TSCA if sufficient relevant test data are not forthcoming. Additionally, section 8(e) would remain applicable to studies, regardless of age, required to be reported pursuant to that section.

III. Refinements to the TSCA Section 8(d) Information Collection Program

A. The Voluntary Program

For over twenty years, the ITC has received voluntary data submissions from manufacturers, importers, processors and users of chemicals recommended by the ITC and has engaged in dialogue with several chemical industry trade associations and their members to discuss the needs for these data. Such dialogue provides opportunities to discuss in a more focused way data needed by ITC member organizations, and may in some cases result in the ITC obtaining sufficient information to remove a chemical from the Priority List provided by the ITC to EPA. The following are examples that illustrate the significance of these activities:

(1) Discussions between the ITC and CMA's Propylene Glycol Ethers Panel resulted in the provision of data and facilitated the removal of propylene glycol ethers from the Priority List (60 FR 42982, August 17, 1995).

(2) Discussions between the ITC and Silicones Environmental Health and Safety Council (SEHSC) resulted in the provision of data and facilitated the removal of many siloxanes from the Priority List (61 FR 4188, February 2, 1996).

Recently, most additions to the list of chemical substances and mixtures subject to TSCA section 8(d) reporting requirements (40 CFR 716.120) have been the result of additions by the ITC to the TSCA section 4(e) Priority List. Voluntary data submissions by numerous chemical companies and trade associations to the ITC have been helpful in identifying the important commercial chemicals that require testing and identifying the types of tests that need to be conducted. A request for the voluntary submission of health and safety data prior to the promulgation of a section 8(d) rule for a recommended chemical was issued by the ITC in its 40th Report to the EPA Administrator (62 FR 30580, June 4, 1997). Such requests provide an opportunity for industry representatives to voluntarily submit information related to the ITC's testing or informational needs. When responding to requests, a letter (or e-mail) of intent to submit the information must be received by the ITC no later than 30 days after the date the ITC Report is published in the **Federal Register**. If the ITC receives a ''letter of intent,'' followed by a voluntary information submission, the ITC will make a decision regarding the need for additional information following its review of all relevant information. If no ''letter of intent'' (or e-mail) is received, the ITC will request in its next Report that EPA promulgate a TSCA section 8(d) rule requiring the reporting of health and safety studies on the recommended chemical substance or mixture.

B. Electronic Submissions

The EPA, ITC, and industry have had an interest for a number of years in the development of a means for providing electronic submissions of TSCA section 8(d)-related data. This interest was stimulated for the following reasons:

(1) Electronic submissions would reduce costs to industry and the EPA by eliminating copying time and charges.

(2) Electronic submissions would cut the large amount of paper generated with each submission.

(3) Electronic submissions could be linked to tracking systems to ease document management efforts by EPA, ITC, and industry.

(4) Electronic submissions would have the potential to be searchable and permit easier review.

(5) Electronic submissions could be more easily and rapidly transferred to end users allowing potential real time assessment of submissions.

(6) Electronic submissions could be ''uploaded'' to existing databases.

(7) Electronic submissions may be readily made publicly available through existing and new information dissemination vehicles.

Currently, three areas related to electronic submissions of TSCA section 8(d) data are under consideration:

(1) Cover sheets for section 8(d) documents.

(2) Bibliographic data and abstracts of section 8(d) documents.

(3) Electronic copies of full text section 8(d) documents.

Documents containing confidential business information (CBI) must not be submitted electronically. Electronic submissions of section 8(d) data are considered public information by the Agency.

The current status of the above efforts is as follows:

Coversheets, bibliographic data and abstract submittal. Standardized coversheets have been designed by a committee consisting of members from EPA and industry. These coversheets provide the information required for entry of data into EPA's Toxic Substances Control Act Test Submissions (TSCATS) database as well as some additional data desired by the Agency. Currently EPA is investigating the possibility of placing templates of this coversheet on a World Wide Web page to permit easy access and a means for transmitting completed cover sheets to EPA, and matching transmitted coversheets to the paper copies of the section 8(d) documents when they are received by EPA. These coversheets will provide a standardized form for submittal of data whether used in

electronic form or as a paper attachment to a section 8(d) document.

As part of this effort, industry would submit bibliographic data (title, submitter, laboratory), indexing terms (as they are used in the TSCATS database) and abstracts of section 8(d) documents submitted. Some industry groups have indicated that there is little incentive to develop the means to submit these data electronically if they normally only submit a few studies or if their files are not currently in electronic form. EPA agrees that current incentives are lacking, but feels that, with time, industry (particularly large corporations) will have ''computerized'' file structures, and electronic filing may provide industry with a cost savings. If EPA establishes its data needs now, industry can accommodate them, at little expense, when developing electronic files. With advance knowledge of these data elements, industry can ensure that any database developed will be compatible with electronic submission of section 8(d) information.

Full text electronic documents. The development of systems to accommodate submission of full text documents in electronic form will assist in reducing storage space, providing easily read documents, and potentially allowing the searching of documents for specific subjects. EPA anticipates that electronic documents would be provided in a variety of file formats including, but not limited to, standard word processing files, images, and combinations of these, and any system developed would need to accommodate all formats. Information from laboratory studies, particularly raw data, is still typically maintained in handwritten form, and unless a specific company has its own reason for converting this material to electronic form, there is little incentive to convert for submission to EPA. In addition, industries who submit relatively few documents may initially prefer paper submission. For these reasons, industry has encouraged EPA to develop means for receiving submissions in electronic form, while also maintaining the current process for receiving paper copies of TSCA section 8(d) submissions.

EPA believes there are a number of advantages to developing the means to submit section 8(d) information in electronic form, thus the development of these procedures will continue. The current system of paper submissions will be continued because of the cost of converting to electronic submissions, particularly for those who submit relatively few documents or do not currently have their files computerized. It is anticipated, however, that in the future, more companies will have electronic files and that there will be a cost savings associated with the submission of section 8(d) documents by electronic filing. As the means to submit documents electronically progresses, EPA will address issues concerning document security, integrity, and authenticity.

C. Updated List of Chemicals for which TSCA Section 8(d) Reporting is Required

Currently, when a chemical or chemical class appears on the section 4(e) Priority List, an amendment to the section 8(d) regulations at 40 CFR 716.120, effective thirty days after publication in the **Federal Register**, requires submission of all health and safety studies for 10 years after the notice is published. EPA has also made the section 8(d) list at 40 CFR 716.120 available on EPA's Home Page through a World Wide Web Site (http://www.epa.gov). Under the revised section 8(d) rule, EPA has reduced the reporting period, in general, from 10 years to 60 days. Because of this change in the reporting period, EPA will no longer conduct biennial review of chemical substances and mixtures listed at 40 CFR 716.120. EPA is amending the sunset date for all chemical substances and mixtures listed at 40 CFR 716.120, for which reporting is currently required, to June 30, 1998. Nevertheless, EPA will continue to publish each chemical or mixture on the list at 40 CFR 716.120, including the sunset date, for a period of 5 years.

In a specific section 8(d) rule, EPA may, in certain circumstances in which it has identified a continuing need for information, continue to list chemical substances and mixtures at 40 CFR 716.120 for a period of time not to exceed 2 years. In this way, EPA reserves the ability to require the reporting of information during periods longer than 60 days where EPA believes that new and potentially significant data may be generated beyond the 60 day period, while reducing the burden of industry on a routine basis.

IV. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS-42188B (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–42188B. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

A. Supporting Documentation

This record contains the basic information considered in developing this Rule and includes the following information:

Federal Register notice of Public Meeting for TSCA Section 8(d) Revision, (August 23, 1996, 61 FR 43546).

Communications consisting of:

(a) Written letters.

(1) AAMA & AIAM. 1996. Comments of the American Automobile Manufacturers Association and the Association of International Automobile Manufacturers on EPA's TSCA Section 8(d) Reinvention Initiative, November 1, 1996, Washington, DC.

(2) AIA. 1996. Letter from Roundtree, G. to Frank Kover, OPPT, EPA for TSCA Section 8(d) Revision Project, Aerospace Industries Association, October 15, 1996, Washington, DC.

(3) API. 1996. Comments of the American Petroleum Institute on EPA's Review of Reporting Requirements Under Section 8(d) of the Toxic Substances Control Act, November 1, 1996, Washington, DC.

(4) Adams, G.L. 1992. Letter to TSCA Public Document Office. ''OPPTS–82038 TSCA Section 8(d) Guidance on Modeling Health and Safety Studies.'' March 4, 1992, 3M, St. Paul, MN 55144.

(5) Adams, G.L. 1995. Letter to TSCA Public Document Office. ''OPPTS–84030 TSCA Section 8(d).'' October 19, 1995, 3M, St. Paul, MN 55144.

(6) Christman, M.H. 1992. Letter to TSCA Public Document Office. Comments on Docket Control Number OPPTS–82038: ''Questions and Answers: Applicability of the Toxic Substances Control Act (TSCA) Section 8(d) Model Health and Safety Reporting Rule (40 CFR Part 716) to Modeling

Studies.'' 57 FR 1723 (January 15, 1992), April 1, 1992, DuPont, Wilmington, Delaware 19898.

(7) CMA. 1988. Letter to Joseph Merenda, Director, Existing Chemical Assessment Division, EPA, May 2, 1988, Washington, DC.

(8) CMA. 1991. Letter to Mark Greenwood, Director, Office of Toxic Substances, EPA, August 26, 1991, Washington, DC.

(9) CMA. 1996. Recommendations of the Chemical Manufacturers Association for Reform in EPA's Reporting Requirements Under Section 8(d) of the Toxic Substances Control Act, October 15, 1996, Washington, DC.

(10) Green, D.H. 1994. Letter to Patricia A. Roberts, Office of General Counsel, EPA, for Regulations of Wastes Under TSCA, October 6, 1994, Piper & Marbury, Washington, DC.

(11) Green, D.H. 1996A. Letter to Patricia A. Roberts, Office of General Counsel, EPA, for TSCA section 4 Test Rules and Waste Imports, April 5, 1996, Piper & Marbury, Washington, DC.

(12) Green, D.H. 1996B. Letter to Keith Cronin, Chemical Control Division, OPPT, for Comments on Issues Raised at EPA Public Meeting on TSCA Section 8(d) Amendments (OPPTS–4218), October 15, 1996, Piper & Marbury, Washington, DC.

(13) Greenwood, M.A. 1996. Letter to Frank Kover, OPPT, US EPA for TSCA Section 8(d) Revision Project, Ropes & Gray, Washington, DC.

(14) Harvey, S.K. 1996. Letter to TSCA Docket Contol Number 42188 for Comments on Section 8(d) Notice, October 14, 1996, FMC Corporation, Philadelphia, PA.

(15) Kuryla, W.C. 1990. Letter to Charles Auer, Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances, for Request for Interpretation of TSCA Section 8(d), March 29, 1990, Union Carbide Corporation, Danbury, CT 06817.

(16) Kuryla, W.C. 1995. Letter to Frank Kover, OPPT, US EPA for TSCA Section 8(d) Revision, December 21, 1995, Union Carbide Corporation, Danbury, CT 06817.

(17) Petke, F. D. 1996. Letter to Frank Kover, OPPT, US EPA, Comments on Revisions to TSCA Section 8(d), October 10, 1996, Eastman Chemical Company, Kingsport, TN 37662.

(18) Robinson, R.H. 1995A. Letter to Regulatory Coordination Staff, OPPTS, EPA, for Regulations Reinvention Initiative—Opportunity to Submit Comments in OPPTS, May 16, 1995, Hazardous Waste Management Association.

(19) Robinson, R.H. 1995B. Letter to Denise Keehner, Deputy Director, Chemical Control Division, OPPTS, EPA, for Meeting Concerning Applicability of TSCA to Wastes, May 31, 1995, Hazardous Waste Management Association.

(20) Sanders, W.H. III. Undated. Letter to Gary King, Regulatory Program Manager, Safety-Kleen Corporation, Elgin, Illinois, Office of Pollution Prevention and Toxics, EPA, Washington, DC.

(21) Wilson, J.D. 1992. Letter to TSCA Public Document Office. Comments on Docket Control Number OPPTS–82038: ''Questions and answers: Applicability of the Toxic Substances Control Act (TSCA) Section 8(d) model health and safety reporting rule to modeling studies.'' 57 FR 1723 (January 15, 1992), July 20, 1992, Monsanto Co., St. Louis, MO 63167.

(22) Zoll, D.F. 1988A. Letter to Charles L. Elkins, Director of Office of Toxic Substances. May 24, 1988, Guidance on Application of TSCA Section 8(d) to Community Health Standards and Modeling and Monitoring Reports Developed in Connection With Section 313 of EPCRA, Chemical Manufacturers Association, Washington, DC.

(23) Zoll, D.F. 1988B. Letter to Joseph J. Merenda, Director of the Assessment Division, EPA, June 28, 1988, Application of TSCA Section 8(d) to Modeling and Other Materials Developed in Connection With Section 313 of EPCRA, Chemical Manufacturers Association, Washington, DC.

(b) Meeting summary.

EPA. Agenda and Presentation; Public Meeting for Revisions's in EPA's Reporting Requirements under Section 8(d) of the Toxic Substances Control Act, September 12, 1996, Washington, DC.

B. References

(1) ''Reinventing Environmental Regulation,'' Clinton Regulatory ReformInitiative, Washington, DC (March 16, 1995).

(2) CMA. 1987. Recommendations of the Chemical Manufacturers Association for Modification of EPA's Regulations Under Section 8(d) of TSCA. December 28, 1987. Washington, DC.

(3) CMA. 1996. Regulatory Priorities of the Chemical Manufacturers Association for Modification of EPA's Regulations Under Section 8(d) of TSCA (Draft). June, 1996. Washington, DC.

(4) Syracuse Research Corporation. ''Support Document for Proposed Revisions to Section 8(d) of TSCA,'' Syracuse NY (April 30, 1997).

(5) Chemical Manufacturers Association. ''Recommendations of the Chemical Manufacturers Association for Reforms in EPA's Reporting Requirements Under Section 8(d) of the Toxic Substances Control Act'' (October 15, 1996).

(6) EPA. ''Analysis of the Proposed Streamlining of Section 8(d) Rule Requirements,'' Washington, DC (April 30, 1997).

V. Regulatory Assessment Requirements

The Office of Management and Budget (OMB) has exempted actions issued pursuant to section 8(d) of TSCA from OMB review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this direct final rule is expected to provide significant reductions in the burden and costs associated with reporting under TSCA section 8(d) for those subject to reporting (i.e., manufacturers, importers, and processors of chemicals), as well as those who use the information reported (i.e., the ITC and EPA), and is not expected to result in any adverse impacts.

As a result, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993). Moreover, it does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

According to the Paperwork Reduction Act (PRA), 44 USC 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to reporting under TSCA section 8(d) have already been approved by OMB pursuant to the PRA under OMB control number 2070–0004 (EPA ICR No. 575). This action does not impose

any new collections or burden requiring additional OMB approval.

The annual public burden for the existing requirements ranged between 2 and 23 hours per response (depending upon the individual respondent activities). The changes made to the requirements through this direct final rule reduce the annual public burden by 5,000 hours, for a new annual public burden of between 1 and 12 hours per response. If the Agency does not receive any adverse comments so that this direct final rule can become effective, EPA will then amend the total burden hours approved under OMB Control number 2070–0004 to reflect this reduction.

Under the PRA, burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send any comments about the accuracy of this burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the OMB control number in any correspondence, but do not submit any reports to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action does not have a significant economic impact on a substantial number of small entities.

VI. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 716

Environmental Protection, Chemicals, Hazardous substances, Health and Safety, Reporting and recordkeeping requirements.

Dated: March 18, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

PART 716—[AMENDED]

1. The authority for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By revising § 716.5 to read as follows:

§ 716.5 Persons who must report.

(a) Except as provided in paragraphs (b) and (c) of this section, only those persons described in this section are required to report under this part. Persons who must report include manufacturers (including importers) who fall within the North American Industry Classification System (NAICS) (in effect as of January 1, 1997) Subsector 325 (chemical manufacturing and allied products) or Industry Group 32411 (petroleum refineries), who:

(1) In the 10 years preceding the effective date on which a substance or mixture is added to § 716.120, either had proposed to manufacture (including import), or had manufactured (including imported) the listed substance or listed mixture (including as a known byproduct), are required to report during the reporting period specified in § 716.65.

(2) As of the effective date on which a substance or mixture is added to § 716.120, and who propose to manufacture (including import), or who are manufacturing (including importing) the listed substance or listed mixture (including as a known byproduct), are required to report during the reporting period specified in § 716.65.

(3) After the effective date on which a substance or mixture is added to § 716.120, and who propose to manufacture (including import) the listed substance or listed mixture (including as a known byproduct), are required to report during the reporting period specified in § 716.65.

(b) A rule promulgated under the authority of 15 U.S.C. 2607(d) may require that any person who does not fall within NAICS (in effect as of January 1, 1997) Subsector 325 or Industry Group 32411, and who had proposed to manufacture (including import) or process, had manufactured (including imported) or processed, proposes to manufacture (including import) or process, or is manufacturing (including importing) or processing a substance or mixture listed in § 716.120 must report under this part.

(c) Processors and persons who propose to process a substance or mixture otherwise subject to the reporting requirements imposed by this part are not subject to this part unless EPA specifically states otherwise in a particular notice or rule promulgated under the authority of 15 U.S.C. 2607(d).

3. By adding § 716.20(b)(5) to read as follows:

§ 716.20 Studies not subject to reporting requirements.

* * * * *

(b) * * *

(5) Rulemaking proceedings that add substances and mixtures to § 716.120 will specify the types of health and/or environmental effects studies that must be reported and will specify the chemical grade/purity requirements that must be met or exceeded in individual studies. Chemical grade/purity requirements will be specified on a per chemical basis or for a category of chemicals for which reporting is required.

4. By revising § 716.25 to read as follows:

§ 716.25 Adequate file search.

The scope of a person's responsibility to search records is limited to records in the location(s) where the required information is typically kept, and to records kept by the person or the person's individual employee(s) who is/are responsible for keeping such records or advising the person on the health and environmental effects of chemicals. Persons are not required to search for reportable information dated before January 1, 1977, to comply with this subpart unless specifically required to do so in a rule.

5. By revising the first sentence in § 716.30(a)(1) to read as follows:

§ 716.30 Submission of copies of studies.

(a)(1) Except as provided in §§ 716.5, 716.20, and 716.50, persons must send to EPA copies of any health and safety studies in their possession for the

substances or mixtures listed in § 716.120. * * *

* * * * *

6. By revising § 716.35(a), introductory text, to read as follows:

§ 716.35 Submission of lists of studies.

(a) Except as provided in §§ 716.5, 716.20, and 716.50, persons subject to this rule must send lists of studies to EPA for each of the listed substances or listed mixtures (including as a known byproduct) in § 716.120 which they are manufacturing, importing, or processing, or which they propose to manufacture (including import) or process.

* * * * *

7. By revising § 716.45(c)(3) to read as follows:

§ 716.45 How to report on substances and mixtures.

* * * * *

(c) * * *

(3) The substance of the grade/purity specified in each rule promulgated under 15 U.S.C. 2607(d).

8. By revising § 716.60(a) to read as follows:

§ 716.60 Reporting schedule.

(a) *General requirements.* Except as provided in § 716.5 and paragraphs (b) and (c) of this section, submissions under §§ 716.30 and 716.35 must be postmarked on or before 60 days after the effective date of the listing of a substance or mixture in § 716.120 or within 60 days of proposing to manufacture (including import) or process a listed substance or listed mixture (including as a known byproduct) if first done after the effective date of the substance or mixture being listed in § 716.120.

* * * * *

9. By revising the § 716.65 to read as follows:

§ 716.65 Reporting period.

Unless otherwise required in a rule promulgated under 15 U.S.C. 2607(d) relating to a listed chemical substance or listed mixture [hereinafter ''rule''], the reporting period for a listed chemical substance or listed mixture will terminate 60 days after the effective date on which the listed chemical substance or listed mixture is added to 40 CFR 716.120. EPA may require reporting for a listed chemical substance or listed mixture beyond the 60 day period in a rule promulgated under 15 U.S.C. 2607(d), however EPA will not extend any reporting period later than 2 years after the effective date on which a listed chemical substance or listed mixture is added to 40 CFR 716.120. After the applicable reporting period terminates, any person subject to the rule under 40 CFR 716.5 (a)(2) or (a)(3) and who has submitted to EPA lists of ongoing or initiated studies under 40 CFR 716.35 (a)(1) or (a)(2) must submit a copy of any such study within 30 days after its completion, regardless of the study's completion date.

§ 716.120 [Amended]

10. The tables in § 716.120 (a), (c), and (d) are amended by revising the dates in the ''Sunset date'' column that have not yet occurred as of April 1, 1998, to read ''June 30, 1998''.

[FR Doc. 98–8425 Filed 3–31–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; FCC 98–23]

Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* (''MO&O'') reaffirms & clarifies the Commission's rules to implement digital television. The intended effect of this action is to provide a host of new and beneficial services to the American public, while preserving and improving free universal television service that serves the public.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, Mass Media Bureau, Policy & Rules Division, 202–418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *MO&O*, MM Docket No. 87–268, FCC 98–23, adopted February 17, 1998 and released February 23, 1998. The full text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C., 20036, (202) 857–3800.

I. Introduction

1. In the *Fifth Report and Order*, 62 FR 26996 (May 16, 1997), in the digital television (''DTV'') proceeding, we adopted rules to permit the nation's broadcasters to implement the conversion to digital television in accordance with the Telecommunications Act of 1996 (''1996 Act''). Our goals were to preserve and promote free, universally available, local broadcast television in a digital world, as well as to advance spectrum efficiency and the rapid recovery of spectrum by fostering the swift development of DTV. Accordingly, we sought to maximize broadcasters' flexibility to provide a digital service to serve the needs and desires of the viewers, while adopting rules to ensure a smooth transition to digital television.

2. We established an aggressive but reasonable construction schedule, a requirement that broadcasters continue to provide free, over-the-air television service, a target date of 2006 for the completion of the transition, and a simulcasting requirement phased in at the end of the transition period. We also recognized that digital broadcasters remain public trustees of the nation's airwaves and have a responsibility to serve the public interest. In order to permit an opportunity to reassess the decisions we made in the *Fifth Report and Order,* we also noted our intention to conduct a review of the progress of the transition to DTV every two years. In response to petitions for reconsideration from various parties, we take this opportunity to reaffirm, revise, or clarify certain of our actions. Issues raised in the petitions for reconsideration that are not addressed here will be resolved in separate proceedings or future orders as noted.

II. Issue Analysis

A. Eligibility

3. *Background.* The 1996 Act expressly limited initial eligibility for DTV licenses to persons that, as of the date of the issuance of the licenses, hold either a construction permit or license (or both) for a television broadcast station. In the *Fifth Report and Order,* the Commission issued initial DTV licenses simultaneously to all eligible full-power permittees and licensees. We concluded that it more effectively effectuates the Congressional scheme to implement the statute through a streamlined three-phased licensing process, with the first phase consisting of the initial DTV license, rather than through the conventional two-phased licensing process. Use of the two-step process without the initial licensing phase would have prevented the establishment of a date certain at which to determine initial eligibility because, given the statutory directive that eligibility be limited to permittees and licensees as of the date of issuance of the DTV licenses, it could potentially

have left eligibility open until the last DTV operating license was granted, a period that could possibly take years. This was also necessary to allow us to establish the DTV Table of Allotments.

i. Alleged Exclusion of Eligible Permittees

4. *Petitions/Comments.* Coast TV (''Coast'') and Three Feathers Communications, Inc. (''Three Feathers'') assert that they held television construction permits as of the date of issuance of the DTV licenses but were erroneously excluded from the list of eligible broadcasters.

5. *Discussion.* Commission records indicate that Three Feathers held a construction permit for channel 36, Hutchinson, KS, as of the date of issuance of the DTV licenses. Similarly, Coast's application for a construction permit for channel 38, Santa Barbara, CA, had also been granted before that date, thereby making it eligible for a DTV license. Their exclusion was inadvertent. Accordingly, the foregoing facilities of Three Feathers and Coast are eligible for initial DTV licenses pursuant to the *Fifth Report and Order,* and we shall amend the DTV Table of Allotments to reflect their eligibility.

ii. Eligibility of Parties with Pending NTSC Applications

A. General Matters

6. *Petitions/Comments.* Several petitioners argue that parties whose new NTSC construction permit applications were still pending as of the date of issuance of the initial DTV licenses should be able to participate in the transition to DTV, at least under certain circumstances. Many of these petitioners filed applications within the past three years that are mutually exclusive with other applications and which, as a result, have not been grantable by the Commission. Some petitioners claim that the newly granted NTSC construction permits would be worth very little if they could not be used for DTV, but instead had to be surrendered to the Commission at the end of the transition period. Similarly, other petitioners assert that pending applicants cannot realistically make the substantial investments required to proceed with their applications and construct facilities absent assurances that their NTSC channels can be converted to DTV.

7. *Discussion.* The 1996 Act stated that, if the Commission determines to issue additional DTV licenses, the Commission ''should limit the initial eligibility for such (DTV) licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both) * * * In the *Fifth Report and Order,* we fully implemented this provision. We made no decision at that time regarding the assignment of DTV channels to new permittees and licensees whose pending NTSC applications had not yet been granted and who were, as a result, not awarded initial DTV licenses.

8. We shall afford new NTSC permittees, whose applications were not granted on or before April 3, 1997 and who were therefore not eligible for an initial DTV paired license, the choice to immediately construct either an analog or a digital station on the channel they were granted. They will not be awarded a second channel to convert to DTV but may convert on their single 6 MHz channel. If they choose the analog option, they will be subject to the traditional two-year construction period applied to NTSC stations, and they may, upon application to the Commission, convert their analog facility to DTV at any point during the transition period, up to the end of that period.

9. All NTSC service must cease at the end of the transition period. Because NTSC is a technology of the past that will cease to exist, authorizing new analog stations that cannot evolve to digital operation would have significant public interest costs. It could limit the ability of the analog broadcaster to serve its viewers as well as it otherwise might; it could put the licensee at a competitive disadvantage vis-a-vis its emerging digital competitors; and viewers would lose altogether a channel of free, over-the-air video programming at the end of the transition period. In contrast, allowing the transition to DTV would allow broadcasters to better serve their viewers on a local scale, and it could help facilitate the overall conversion from analog to digital broadcasting across the country.

10. Before the NTSC permittee or licensee can build a DTV station, either initially or after first building an analog station, it must file a DTV application. We will treat these DTV applications as minor modifications. The proposed DTV facility must protect all DTV and NTSC stations by complying with all applicable DTV technical rules. In addition, such a new permittee or licensee's DTV facility must generally comply with analog operating rules, such as minimum operating hours, except where the analog rule is inconsistent with the digital rules or inapplicable to digital technology. It must also provide one, free over the air video program service, as with other DTV licensees. These stations will also be afforded the flexibility to provide digital ancillary or supplementary services authorized by § 73.624(c) of the Commission's rules, consistent with the DTV standard.

11. To prevent warehousing of spectrum, we will require these permittees to build a station, analog or digital, within the initial two-year construction period granted, rather than applying the DTV construction timetable adopted in the *Fifth Report and Order.* We will not extend the time for construction based on sale of the permit or based on a decision to convert to DTV in the initial two-year period before the analog station is built. Those stations that first construct and operate an analog station (within the initial two-year period) and then choose later to construct a DTV station must convert by the 2006 deadline and, upon grant of a DTV permit, will have (subject to the 2006 deadline) until the construction deadline for that category of station or a period of two years, whichever is longer, within which to build the DTV station.

12. DTV stations operating on a core NTSC channel will continue to do so after the end of the transition period. However, stations operating outside the core will be doing so on an interim basis only. At the end of the transition period, to fully implement the policies adopted in the *Sixth Report and Order,* 63 FR 460 (January 6, 1998), and the recently concluded *Channels 60–69 Reallocation,* 63 FR 6669 (February 10, 1998), proceeding, the Commission will reassign all out-of-core DTV broadcasters, including the currently pending applicants, to channels in the core. Because the out-of-core allotment is intended to be temporary, the subsequent move to a core channel will be considered a minor change in facilities, intended solely to effectuate the policies set forth in the above-mentioned documents.

B. Denied NTSC Applications

13. *Petitions/Comments.* SL Communications (''SL'') requests reconsideration of an allotment decision in the *Sixth Report and Order* that we consider here because it implicates eligibility. SL requests that we allot a DTV channel for a vacant analog UHF channel in Texas, for which an initial construction permit application was filed by another party. In 1995, that applicant and SL filed a petition to substitute SL for the applicant. The petition was denied on February 27, 1997, the proceeding was terminated, and a petition for reconsideration is pending. Because there was no

permittee or licensee for the channel in question, there was no corresponding DTV allotment made in the *Sixth Report and Order* and no additional license awarded in the *Fifth Report and Order*. SL argues that a DTV allotment should have been made because an application was on file before October 24, 1991.

14. *Discussion.* We decline to reconsider this allotment eligibility decision. Under the eligibility criteria established by section 336(a)(1) of the Communications Act and adopted in the *Fifth Report and Order*, SL was not eligible for the award of an initial DTV license, as it was not a permittee or licensee as of the date of issuance of the DTV licenses. Indeed, the original applicant for which SL sought to substitute did not have a permit at that time, and the application had been denied. Thus, regardless of the outcome of the proceeding to reconsider whether the NTSC application was properly denied, we were not required to take the vacant analog allotment into consideration when we crafted the DTV Table of Allotments. It would be premature to give such consideration in the instant case because no permit or license has been granted. However, in its recent order denying the petition for reconsideration, *Dorothy O. Schulze and Deborah Brigham*, FCC 98–21 (adopted February 12, 1998), the Commission held that the NTSC channel is exempt from the general provisions of the *Sixth Report and Order* deleting vacant NTSC allotments and that the Mass Media Bureau should take appropriate steps to permit the filing of applications for this channel. If such an application for an NTSC construction permit is subsequently granted, the permittee will have the same rights and obligations as other parties with pending NTSC applications, as discussed above.

B. Definition of Service—Spectrum Use

15. *Background.* In the *Fifth Report and Order,* we recognized the benefit of affording broadcasters the opportunity to develop additional revenue streams from innovative digital services. Therefore, we allowed broadcasters the flexibility to respond to the demands of their audiences by providing ancillary or supplementary services that do not derogate the mandated free, over-the-air program service. We did not require that such services be broadcast-related, and we noted that such ancillary or supplementary services could include, but are not limited to, subscription television programming, computer software distribution, data transmissions, teletext, interactive services, audio signals, and any other services that do not interfere with the required free service.

16. As noted in the *Fifth Report and Order*, our decision to allow broadcasters flexibility to provide ancillary or supplementary services is supported by section 336. This section specifically gives the Commission discretion to determine, in the public interest, whether to permit broadcasters to offer such services. Section 336(a)(2) of the Act provides that if the Commission issues additional licenses for advanced television services, it ''shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.''

i. Ancillary or Supplementary Services

17. *Petitions/Comments.* The Personal Communications Industry Association (''PCIA'') argues that the *Fifth Report and Order* did not adequately define ''ancillary or supplementary'' services. PCIA claims that the provision of land mobile service by DTV licensees would not serve the public interest, as it would create an uneven playing field between DTV licensees and mobile service providers. PCIA further claims that consideration of the effect of the Order on mobile licensees is missing from the *Fifth Report and Order's* Final Regulatory Flexibility Analysis, as it identifies small businesses that may be impacted by the decisions in the *Fifth Report and Order*, but analyzes the impact only on other broadcast licensees.

18. PCIA also argues that the Commission's decision is contrary to the 1993 Budget Act, which authorized the Commission to auction spectrum used for commercial mobile radio purposes. PCIA claims that DTV licensees, which were not required to participate in an auction, will ultimately have license rights different from those of other mobile service providers. They argue that these licensees do not appear from the *Fifth Report and Order* to have the same regulatory responsibilities as current mobile providers and are permitted to provide video broadcast and subscription services.

19. PCIA acknowledges that § 73.624(c)(1), adopted in the *Fifth Report and Order*, states that DTV licensees offering such services must comply with the Commission's regulations regarding each specific service. However, it argues that the Commission has failed to define these regulatory requirements in sufficient detail. For example, PCIA questions whether DTV licensees offering land mobile services will be required to provide emergency 911 access, telephone number portability, and mandatory resale.

20. AAPTS and PBS (''AAPTS/PBS'') oppose PCIA's petition and argue that DTV licensees should be allowed to provide land mobile and other ancillary or supplementary services that do not relate to broadcast service. AAPTS/PBS states that the *Fifth Report and Order's* blanket authorization of supplementary services is consistent with the mandate of section 336(a)(2), which allows ancillary service offerings that are consistent with the public interest. AAPTS/PBS also observes that allowing public television stations the flexibility to provide a variety of services is crucial, as these services could generate needed revenue for DTV construction and operation.

21. *Discussion.* We are unpersuaded by PCIA's arguments that we should specifically exclude the provision of mobile services from the definition of DTV ancillary or supplementary services. As we stated in the *Fifth Report and Order,* we believe that the approach we have taken with respect to permitting ancillary or supplementary services will best serve the public interest by fostering the growth of innovative services to the public and by permitting the full possibilities of DTV to be realized. Granting broadcasters the flexibility to offer whatever ancillary or supplementary services they choose may also help them attract consumers to the service, which will, in turn, speed the transition to digital. Such flexibility should encourage entrepreneurship and innovation, will contribute to efficient spectrum use, and will expand and enhance use of existing spectrum. Permitting broadcasters to assemble a wide array of services that consumers desire will also help promote the success of the free television service.

22. Section 336(b) outlines our authority to permit the provision of ancillary or supplementary services by DTV licensees. Under this section, we are required to limit ancillary or supplementary services to avoid derogation of any advanced television services that we may require. We are also required to apply any regulations relevant to analogous services. Our decision is fully consistent with the statutory requirements. The services we have authorized will not derogate advanced television service, nor will they create inequities for other regulated services.

23. The *Fifth Report and Order* addressed the issue of parity in the treatment of various service providers. We stated that, consistent with section

336(b)(3), all non-broadcast services provided by digital licensees will be regulated in a manner consistent with analogous services provided by other persons or entities. We also noted that we currently follow such an approach for ancillary or supplementary services provided by NTSC licensees, for example, on the vertical blanking interval (VBI) and the video portion of the analog signal. Further, in the *Fifth Report and Order*, we noted that we would review our flexible approach to permit ancillary or supplementary services during our periodic DTV reviews and to make adjustments to our rules as needed. These reviews will allow us to address any specific concerns raised by the mobile service industry regarding the provision of certain ancillary or supplementary services by DTV licensees on a case-by-case basis if warranted.

24. Contrary to the claims of PCIA, our decision regarding ancillary or supplementary services will fulfill our Congressional mandate to establish a fee program that prevents unjust enrichment of DTV licensees. In enacting section 336, Congress specifically recognized the possibility that DTV licensees might offer services competing with those subscription-based services operating on spectrum purchased in the auction process. Congress therefore required that the Commission establish a fee program for ancillary or supplementary services provided by digital licensees if subscription fees are required in order to receive such services.

25. In considering the assessment of fees for the ancillary or supplementary use of the DTV spectrum, Congress mandated that to the extent feasible, the fee imposed should recover an amount that equals but does not exceed the amount that would have been realized in an auction of the spectrum under section 309(j). Congress stated that the fee should be designed to prevent the unjust enrichment of DTV licensees using the DTV spectrum for services analogous to services provided on spectrum assigned at auction. We recently issued a Notice of Proposed Rule Making to consider proposals as to how this statutory provision should be implemented and these fees assessed.

26. Finally, there is no basis to PCIA's claim that we were required to consider the impact of our DTV decision on land mobile licensees in the Final Regulatory Flexibility Analysis (FRFA) appended to the *Fifth Report and Order.* The FRFA, required of agencies in rulemaking proceedings by the Regulatory Flexibility Act, is designed to protect small entities that are directly subject to administrative rules rather than all entities that are indirectly affected by the results that any rules will produce.

ii. Minimum Programming Hours

27. *Petition.* Chronicle Publishing Co. (''Chronicle'') observes that the *Fifth Report and Order* requires broadcasters to provide a free digital video programming service, the resolution of which is comparable to or better than that of today's service, aired during the same time periods that their analog channel is broadcasting. Chronicle argues that there may be unexpected difficulties for stations operating on channels adjacent to nearby stations, for which the interference issues are not yet fully understood. To accommodate such difficulties, Chronicle requests that the Commission modify the foregoing requirement to exempt broadcasters from providing a free digital video signal between the hours of midnight and 6:00 a.m. (even though the analog station is broadcasting) in order to allow licensees to conduct maintenance or resolve any technical or other unanticipated problems arising from the use of new digital technology, especially in the UHF band. Chronicle maintains that such ''down time'' is essential for the ultimate success of DTV.

28. *Discussion.* We decline to grant Chronicle's requested modification to our requirement that broadcasters provide a free digital video programming service when the analog station is broadcasting. This requirement was designed to assure that broadcasters provide on their digital channel the free over-the-air television service on which the public has come to rely. We believe that it is a minimal requirement that should not be unduly burdensome, particularly in light of the flexibility we have otherwise provided to broadcasters to provide a variety of digital services. While we recognize that broadcasters may have technical problems to resolve as they make the transition to DTV, we believe that the remedy requested is overbroad. In the event, however, that stations experience unexpected technical difficulties with the required transition to DTV such as those outlined by Chronicle, they may request special temporary authority to operate at variance from our required minimum digital television service on a case-by-case basis so that such technical difficulties can be resolved. If it later appears that a more general change in our requirements may be necessary, we can consider that modification during our periodic reviews.

C. Public Interest Obligations

29. *Background.* In the *Fifth Report and Order,* we noted that the 1996 Act provided that broadcasters have public interest obligations with respect to the program services they offer, regardless of whether they are offered using analog or digital technology. Noting the differences in views as to the nature and extent of digital broadcasters' public interest obligations, we stated that we would issue a Notice to collect and consider all views on broadcasters' public interest obligations in the digital world. However, we also put broadcast licensees and the public on notice that existing public interest requirements continue to apply to all broadcast licensees, that the Commission may adopt new public interest rules for digital television, and that the *Fifth Report and Order* ''forecloses nothing from our consideration.''

30. *Petitions.* Media Access Project, et al. (''MAP''),[1] contends that the Commission should not delay its analysis of what modified (and increased) public interest obligations it should impose on DTV licensees. According to MAP, the Commission's failure to impose new public interest obligations violates section 201 of the 1996 Act, 47 U.S.C. 336(d), 336 (a)(1), and 47 U.S.C. 336(b)(5). MAP adds that new public interest obligations are also warranted because broadcasters will have full use of 12 MHz (double their available spectrum) for at least 9 years, and also will be able to provide a number of commercial services that were previously impossible. MAP urges the Commission to clarify that all new and existing public interest obligations will apply to both free and subscription program services in both analog and digital modes. MAP contends that such a conclusion appears implicit in the *Fifth Report and Order* and is supported by 47 U.S.C. 336(d).

31. *Decision.* We will not reconsider the approach we took in the *Fifth Report and Order* with respect to the issue of the nature and extent of broadcasters' public interest obligations in the digital world. MAP has not presented sufficient reasons why we must make an immediate decision on these questions instead of issuing a Notice so that we may collect and consider all views on these important issues.

[1] Media Access Project filed jointly with the Center for Media Education, the Consumer Federation of America, the Minority Media and Telecommunications Council, and the National Federation of Community Broadcasters.

D. Transition

i. Simulcast

32. *Background.* In the *Fifth Report and Order,* the Commission declined to adopt a simulcast requirement for the early years of the transition, but it adopted a phased-in simulcasting requirement as follows: by the sixth year from the date of adoption of the *Fifth Report and Order,* there is a 50 percent simulcasting requirement; by the seventh year, a 75 percent simulcasting requirement; and, by the eighth year, a 100 percent simulcasting requirement, which will continue until the analog channel is terminated and the analog spectrum returned.

33. *Petitions: Include Simulcasting Target Dates in Periodic Reviews.* MSTV contends that although the simulcasting phase-in is based on the transition end date of 2006, the Commission may change this date. Therefore, MSTV urges the Commission to expressly include simulcasting target date requirements in its biennial review of the DTV transition. MSTV contends that this will ensure that simulcasting requirements remain tied to consumer acceptance of DTV, and broadcasters have the flexibility to program their DTV channels to best attract the public to DTV during the early stages of the transition.

34. *Limited Simulcasting Exemption for Public TV Stations.* AAPTS/PBS contends that public stations may be adversely affected by the partial-to-full simulcasting requirement, as well as by the requirement that the digital channel operate during the same hours as the licensee's NTSC station. According to AAPTS/PBS, these requirements effectively impose a minimum operating requirement on the DTV station. It therefore advocates that the Commission not require public stations to simulcast their NTSC programming on their DTV stations, because that will effectively require that the licensee operate the DTV station whenever the NTSC station is operating. AAPTS/PBS instead urges that the Commission apply the simulcast requirement only during the hours when a licensee operates the DTV station. AAPTS/PBS notes that for many public stations, the power requirements for operating a DTV station whenever their NTSC station is operating (which is often 18 hours a day) will exceed their financial resources and may chill their ability or willingness to build a DTV station in the first place. Since there are no minimum operating requirements for noncommercial TV stations, according to AAPTS/PBS, these two DTV operation requirements ''could have the perverse result of providing an incentive for public television stations to reduce their NTSC operating hours in order to comply with these (two *Fifth Report and Order*) requirements.''

35. Accordingly, AAPTS/PBS urges that the Commission afford public stations the discretion to determine how many hours a day to operate their DTV stations. AAPTS/PBS contends that public stations will still offer DTV services during a reasonable portion of the day because they incurred the DTV construction costs, and PBS will be delivering HDTV programming at least during prime time. In addition, because public stations rely on audience contributions for their operating costs, they will have an incentive to operate their DTV stations the maximum number of hours they can afford. AAPTS/PBS therefore contends that this proposal will not adversely affect the transition to DTV. If a public station operates its DTV station fewer than the number of hours required to meet the simulcast percentage, the licensee should be required to simulcast for the entire time the DTV station is operating.

36. *Discussion: Periodic Review.* We agree with MSTV that we should expressly include simulcasting requirements in our periodic review. As discussed below, Congress now requires us to reclaim the analog spectrum by December 31, 2006 and to grant extensions of that date to stations under circumstances specified in the statute. We will conduct a periodic review of the progress of DTV every two years until the cessation of analog service. In these reviews, we will address any new issues raised by technological developments, necessary alterations in our rules, or other changes necessitated by unforeseen circumstances.

37. *Noncommercial Stations.* We do not believe that it is necessary at this time to grant AAPTS/PBS's request to afford public stations discretion to determine how many hours a day to operate their DTV stations. We note that, in the *Fifth Report and Order,* we adopted a six-year period for public stations to construct their DTV facilities, the longest construction period for any category of DTV applicant. We reiterate our beliefs, stated in that Order, that special relief measures may eventually be warranted to assist public television stations to make the transition, that it would be premature at this time to determine what those measures might be, and that the specific nature of any special relief for public stations is best considered during our periodic reviews.

ii. Licensing of DTV and NTSC Stations

38. *Background.* In the *Fifth Report and Order,* we concluded that the NTSC and DTV facilities should be licensed under a single, paired license. We stated that this will help both the Commission and broadcasters by keeping administrative burdens down, and that it would allow us to treat the DTV license and the NTSC license together for the purposes of revoking or not renewing a license. Therefore, we stated that once broadcasters have satisfied construction and transmission requirements, they will receive a single, paired license for the DTV and NTSC facilities.

39. *Petitions/Comments.* The Department of Special Districts, San Bernardino County, California (''San Bernardino'') notes that the 1996 Act requires the Commission to condition the DTV license on the ''require[ment] that either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.'' San Bernardino argues that this condition should appear on the face of the instrument for all license renewals granted after the start of 1998, consistent with the eight-year license term and the 2006 reversion date adopted in the *Fifth Report and Order.*

40. *Discussion.* We note that the 2006 reversion date is now statutory. After the adoption of the *Fifth Report and Order* and the filing of the petitions for reconsideration, Congress enacted the Balanced Budget Act of 1997, which provides that ''(a) broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006'' unless the Commission grants an extension based on specific criteria enumerated in the statute. We believe that this statutory language addresses any concerns San Bernardino may have regarding the reversion of one of the licenses of each station. Nevertheless, to ensure that all broadcasters are aware of their obligation to surrender either the original license or the additional license pursuant to Commission regulation, we will place on all broadcast television licenses granted after December 31, 1998, an express condition requiring return of one of the two 6 MHz channels at the end of the transition period. We will impose such a condition on all renewals granted until the transition period has ended.

E. Application/Construction Period

41. *Background.* In the *Fifth Report and Order,* we announced that we would apply a streamlined three-stage application process to the group of initially eligible analog permittees and licensees allotted a paired channel in the DTV Table of Allotments. In the *Fifth Report and Order* itself, the Commission completed Stage 1, the initial modification of the license for DTV, by issuing DTV licenses to all parties initially eligible to receive them. Before initial DTV licensees can commence construction, however, we required that they file an application for a construction permit. We stated that we would treat the construction application, the second stage, as a minor change application, which does not require a showing of financial qualifications. We observed that the DTV construction permit application would not constitute a change in frequency, but merely the implementation of the initial DTV license on a channel assigned in the *Sixth Report and Order.* In the third stage, upon completion of construction, the permittee may commence program tests upon notification to the Commission, provided that an application for a license to cover the construction permit for the DTV facility is timely filed.

i. Financial Qualifications

42. *Petitions/Comments.* MAP argues that the Commission should have required broadcasters to demonstrate their financial qualifications as a condition of awarding an initial DTV permit or license. MAP notes that the Commission's classification of an application for DTV construction permit as a minor change means that the applicant is not required to demonstrate its financial qualifications. MAP asserts that this decision threatens to delay the institution of DTV service because financially unqualified applicants may warehouse awarded spectrum or simply be unable to construct DTV facilities.

43. MAP also argues that the conversion to DTV is not a change in facilities, but instead involves issuing a new construction permit and license to each existing broadcaster making the transition. Because the license is new, according to MAP, the Commission is statutorily required to determine whether the broadcaster is qualified to receive it. In this regard, MAP cites section 308(b) of the Communications Act of 1934, as amended, which states that ''(a)ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission may by regulation prescribe as to the * * * financial * * * qualifications of the applicant to operate the station.'' In the alternative, MAP asserts that even if the DTV applications are categorized as a change, the Commission's classification of them as minor is inconsistent with § 73.3572(a)(1) of the Commission's rules. That provision of the rules defines a major change as one involving a change in frequency or community of license. MAP disputes the Commission's assertion in the *Fifth Report and Order* that ''the change involved in constructing and operating a DTV facility does not constitute a change in frequency, merely the implementation of the initial DTV License on a channel assigned in the *Sixth Report and Order.*'' MAP states that, regardless of whether broadcasters use their new frequency for the current analog or future digital transmissions, they will change their frequencies and be subject to § 73.3572(a)(1).

44. *Discussion.* We decline to reconsider the streamlined licensing process, under which we do not require a showing of financial qualifications. We continue to believe that the DTV construction permit applications related to these allotments should be treated as minor change applications. They do not involve new stations or changes in frequency as these terms have traditionally been used for the purposes of § 73.3572(a)(1) of the Commission's rules to define a major change. This is not an instance where an individual broadcaster has devised its own plan to change its channel or community of license and is requesting Commission authorization of that specific change. To the contrary, in order to implement the transition to DTV that we have found will serve the public interest, each application is to implement a specific DTV channel allotment expressly set forth by the Commission in the *Sixth Report and Order* for use by the applicant, the incumbent analog broadcast licensee, as contemplated by Congress.

45. We also conclude that treating DTV applications like applications for minor changes is consistent with Section 308(b) of the Communications Act. Section 308(b) authorizes the Commission to exercise its discretion when determining whether a financial qualifications showing requirement for certain classes of applications would serve the public interest. As noted above, Section 308(b) requires that ''(a)ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts *as the Commission may by regulation prescribe* as to the * * * financial * * * qualifications of the applicant to operate the station.'' 47 U.S.C. 308(b) (emphasis supplied). Consistent with this statutory language, the Commission long ago made a public interest determination that applicants for minor changes in broadcast facilities (*i.e.,* analog television and radio) do not need to provide information regarding their financial qualifications. MAP does not assert that this Commission policy is inconsistent with section 308(b). Further, MAP does not state why the Commission's public interest determinations regarding analog television application forms and DTV license application forms should be considered differently for the purposes of section 308(b). Accordingly, we find MAP's section 308(b) argument unpersuasive.

46. As we emphasized in the *Fifth Report and Order,* one of our primary goals is to achieve a rapid and efficient transition from analog to digital broadcast television. We continue to believe that the approach we have taken will foster swift and widespread construction and operation of digital television stations with minimal risk of spectrum warehousing or disuse. A number of factors will encourage broadcasters to construct their DTV stations quickly. These factors include stations' need to compete with other video program providers, who are also delivering or preparing to deliver digital video programming; the planned cessation of NTSC broadcasting in 2006; and the opportunity to offer a variety of ancillary services in addition to the one mandatory, over-the-air video programming service.

47. In addition, as we discussed in the *Fifth Report and Order,* we will grant requests for extensions of time within which to construct DTV facilities only if they meet specific, delineated criteria. We will grant an extension of the applicable deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the licensee's control, and only if the licensee has taken all reasonable steps to resolve the problem expeditiously. As we stated in the *Fifth Report and Order,* ''such circumstances include, but are not limited to, the inability to construct and place in operation a facility necessary for transmitting DTV, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints, or the lack of equipment necessary to transmit a DTV signal.'' As a further guarantee that valuable DTV spectrum would not be warehoused, the *Fifth Report and Order* noted that we do not anticipate that the circumstance of

''lack of equipment'' would include the cost of such equipment.

ii. Construction Schedule

48. *Background.* The *Fifth Report and Order* adopted a construction schedule for DTV facilities. Affiliates of the top four networks (ABC, CBS, Fox and NBC) must build digital facilities in the ten largest television markets by May 1, 1999. Affiliates of those networks in the top 30 television markets, not included above, must construct DTV facilities by November 1, 1999. All other commercial stations must construct DTV facilities by May 1, 2002. All noncommercial stations must construct their DTV facilities by May 1, 2003. We delineated specific criteria pursuant to which we would grant requests for extensions of time within which to construct.

General Issues

49. *Petitions/Comments.* Several petitioners request reconsideration of the construction schedule. For example, Cordillera Communications (''Cordillera''), which intends to construct nine DTV stations, requests an extension of the deadlines or, in the alternative, relaxation of the standards for granting extensions. According to Cordillera, the full implementation of DTV will take longer than the ten-year period the Commission has established. Cordillera cites the time needed to acquire a tower site, construct a tower in compliance with local and federal regulations, acquire equipment to provide maximum service, and evaluate the impact of DTV on its viewers who receive its NTSC signals via translator. It adds that modifying the construction schedule will prevent the Commission from needlessly expending resources on processing extension applications.

50. *Discussion.* We do not believe that it would serve the public interest to extend the construction timetable established in the *Fifth Report and Order*. If a broadcaster does not complete construction within the time period contemplated by the current timetable, it may request an extension of time within which to construct, as noted above. The criteria we use to determine whether grant of an extension would serve the public interest adequately address the concerns raised by Cordillera. In addition, arguments related to zoning are more relevant to our ongoing proceeding considering the alleged impact of delays to DTV station construction caused by local zoning regulations.

Effect on Radio Stations

51. *Petitions/Comments.* National Public Radio (''NPR'') requests that we extend the construction schedule. It claims that the current timetable, combined with the allotment, in the *Sixth Report and Order*, of DTV channels on the basis of current transmitter sites and replication of existing NTSC service areas, threatens to create a shortage of available tower capacity for DTV antennas. As a result, NPR claims, a substantial number of public radio stations will be forced to relocate their transmitting antennas at a significant financial cost and possible loss of signal coverage areas. It adds that several FM stations have already been informed that they will have to relinquish their tower space to make way for a DTV antenna.

52. *Discussion.* We decline to alter the construction schedule as requested by NPR. First, NPR's claim that a significant number of educational FM stations will have to relinquish their tower space and pay for a costly relocation of their transmitting antennas is, at this time, speculative. NPR provides no documentary evidence to support its claim that several FM stations have already been informed that they will have to relinquish their tower space in order for the tower owner to make room for DTV equipment. It also provides insufficient information regarding the cost or time period of such circumstances. Thus, NPR has not demonstrated at this time that the construction schedule will have any undue negative impact on a significant number of public radio stations. We can revisit this issue, if warranted, during the periodic DTV reviews.

Issues Relating to Noncommercial Television Stations

53. *Petitions/Comments.* AAPTS/PBS states that public television stations with both NTSC and DTV channels outside the core channels should be permitted to defer DTV construction until they have a permanent DTV channel (*i.e.*, the end of the transition period, when they have a core channel). According to AAPTS/PBS, 13 public television stations have both their analog and their digital channels outside channels 2–46, and 13 have channels outside channels 7–51. It adds that ''over half of those stations in each case have operating budgets of less than $5 million. Under the current rules, they not only will have to build two DTV stations, but will have to migrate their viewers to a new channel at the end of the transition.'' AAPTS/PBS states that since the Commission has not yet determined what the core channels will be, these public TV stations do not know what that new channel will be at the end of the transition period or when they will learn of the assignment. AAPTS/PBS asserts that this uncertainty makes planning and finding funding for the transition difficult.

54. AAPTS/PBS's proposal is supported by Motorola as a way for noncommercial educational stations to alleviate conversion costs. According to Motorola, the proposal ''recognize(s) the difficult economics involved with a two step migration to digital service. More importantly, (it) could accelerate the recovery of UHF channels 60–69 for public safety or other wireless use.''

55. *Discussion.* We decline to adopt the modifications to the construction schedule proposed by AAPTS/PBS. We do not believe that such modifications are necessary. Because we recognized the financial difficulties often faced by noncommercial broadcasters, the construction timetable we adopted in the *Fifth Report and Order* provided noncommercial stations a six-year period within which to construct their DTV facilities, the longest construction period allotted to any category of DTV applicant. In the *Fifth Report and Order*, we also stated that special relief measures may eventually be warranted to assist public television stations to make the transition, but we concluded that it was premature to determine what those specific measures should be. We stated then, and we continue to believe, that determining the specific nature of whatever special relief may be needed for noncommercial educational broadcasters is best considered during our periodic reviews. AAPTS/PBS has not demonstrated that its concerns regarding public television stations with both NTSC and DTV channels outside the core channels cannot adequately be addressed in that context. Nonetheless, as discussed in the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, we will consider, on a case-by-case basis, requests to defer construction and/or to make an immediate transition to digital when filed by those stations that have both analog and digital channels outside the core.

Satellite Stations

56. *Petitions/Comments.* Hubbard Broadcasting, Inc. (''Hubbard'') seeks clarification as to the application of the construction schedule to satellite stations. Hubbard asks how the construction schedule applies to satellite stations such as its own that transmit the same network programming as their parent, not by virtue of a network affiliation agreement, but by rebroadcast consent granted by the network.

57. *Discussion.* We clarify that the construction exception for same-market affiliates applies to satellite stations. Thus, with regard to Hubbard's particular example, the two satellite stations are located within the same market as their parent and, according to Hubbard, broadcast the programming of the same network. Under our rules, if a network has more than one affiliate in a top 30 market, the station with the smaller audience share is not subject to the expedited schedule for networks affiliates. Therefore, regardless of the stations' satellite status or type of network contract being used, Hubbard's two satellites are not subject to an accelerated construction schedule. Instead, they are subject to the five-year construction deadline.

iii. Processing Procedures

58. *Background.* In the *Sixth Report and Order,* the Commission allowed flexibility for DTV facilities to be built at locations within five kilometers of the reference allotment sites without consideration of additional interference to analog or DTV service, provided the DTV facilities do not exceed the allotment reference HAAT and ERP values. In the *Fifth Report and Order,* we noted that we would expedite processing of construction permit applications that could correctly certify as to a series of checklist questions, which include whether the proposed facility conforms to the DTV Table of Allotments by specifying an antenna site within five kilometers of the reference allotment site. We noted our intent to grant a construction permit to such broadcasters within a matter of days and noted that other applicants would be required to furnish additional technical information.

59. *Petitions/Comments.* Costa de Oro TV (''Costa de Oro'') asks the Commission to establish expedited processing procedures for stations that need to relocate their transmitters due to the inability to use their current sites. It also asks several questions as to how certain types of applications will be processed.

60. *Discussion.* The October 16, 1997 Public Notice setting forth how DTV construction applications will be processed generally addresses issues such as those raised by the petitioners. As we noted in the *Fifth Report and Order,* we intend to give processing priority to routine DTV applications, which are those in which the applicant can certify compliance with several key processing requirements. We also are expediting the processing of DTV applications in any of the television markets where broadcasters are subject to an accelerated construction timetable (*i.e.,* the top 30 markets). With regard to showings that a requested change is in compliance with the Commission's interference standards, all non-routine DTV applications will be processed pursuant to the criteria adopted in the *Sixth Report and Order* and its reconsideration order, and as set forth in OET Bulletin No. 69.

iv. Selection of Permanent DTV Channel

61. *Petitions/Comments.* AAPTS/PBS petitions the Commission to require stations with both their NTSC and their DTV channel within the core to select their permanent channel several years before the end of the transition period, such as at the end of the construction period or, at the latest, a year after they commence operation.

62. *Discussion.* The issue of whether we should require stations with both channels within the core to select their permanent channel early in the transition will be dealt with in the *Memorandum Opinion and Order* on reconsideration of the *Sixth Report and Order.* We take this opportunity to clarify that non-core licensees will not be subject to competing applications when they apply for their permanent DTV channels.

v. Immediate Transition

63. *Petitions/Comments.* In the *Fifth Report and Order,* we contemplated that each broadcaster would operate its analog station while constructing its digital facilities, and then operate both facilities upon the completion of construction for the duration of the transition. However, several parties request that the Commission allow stations, at least under certain circumstances, to make an immediate and complete transition to DTV upon construction, so that they would not have to operate both digital and analog facilities. For example, Meyer Broadcasting Company (''Meyer''), Reiten Television, Inc. (''Reiten'') and NDBA argue that, because of the transition's high cost to small market stations, the Commission should allow such stations to make an immediate transition from analog to digital, eliminating the need for them to build additional facilities.

64. AAPTS/PBS makes a similar argument for noncommercial, educational television stations, as a way to compensate for their unique funding difficulties. It asserts that, in order to give needed flexibility to smaller public TV stations, the Commission should allow public TV stations with both an NTSC and a DTV channel within the core to convert to DTV on their in-core NTSC channel, rather than having to spend the money to build a separate DTV station. In the alternative, AAPTS/PBS asks that the Commission consider individual requests by stations to employ the immediate transition option where the licensee has been unable to raise the funds to construct the DTV station or lacks the resources to operate two stations simultaneously. In support, Motorola claims that adoption of the proposal could accelerate the recovery of UHF channels 60–69 for public safety or other wireless use.

65. *Discussion.* We recognize both the economic challenges facing small market broadcasters and the unique funding difficulties often experienced by noncommercial television stations. Indeed, we explicitly considered these concerns in the *Fifth Report and Order* when we set the construction schedule and adopted the service rules. It is exactly because of the matters raised by the petitioners that commercial small market broadcasters and all noncommercial broadcasters have a greater period of time within which to construct their facilities. As the network affiliates in the top 30 markets construct and begin to operate their DTV stations, we expect the market to drive construction costs down to a level that all commercial stations will be able to finance construction of their own facilities. This cost decrease should also assist noncommercial broadcasters.

66. However, adoption of these proposals could undermine the simulcasting policy set forth in the *Fifth Report and Order,* a policy that is premised on the idea that each licensee will be operating an NTSC and a DTV station until the end of the transition period. The simulcasting requirement is intended to ensure that broadcasters provide substantially the same programming to all their viewers, regardless of whether those viewers have acquired digital receiver equipment yet. Further, adoption of the proposals could disenfranchise some viewers who watch noncommercial television by removing their option to continue to watch NTSC television until the end of the transition period. Accordingly, we do not at this time believe that adopting the above proposals of Reiten, NDBA, or AAPTS/PBS would serve the public interest. However, we note that we can revisit this conclusion during any of our biennial DTV reviews, should a change in circumstances warrant.

F. Recovery Date

67. *Background.* In the *Fifth Report and Order,* the Commission established a target date of 2006 for the cessation of

analog service. It stated that one of its overarching goals in this proceeding is the rapid establishment of successful digital broadcast services that will attract viewers from analog to DTV technology, so that the analog spectrum can be recovered. Accomplishment of this goal requires that the NTSC service be shut down at the end of the transition period and that spectrum be surrendered to the Commission.

68. Subsequent to the release of the *Fifth Report and Order,* in the Balanced Budget Act of 1997, Congress directed the Commission to reclaim the analog spectrum by December 31, 2006. Congress also required the Commission to grant an extension of that date to a station under a number of specific circumstances cited in that statute.[2]

69. *Petitions.* County of Los Angeles, CA (''Los Angeles'') contends that the 2006 recovery deadline should be shortened for NTSC and DTV stations between channels 60–69 located in southern California, which it argues is necessary to alleviate the severe spectrum shortages facing Los Angeles area public safety agencies. According to Los Angeles, this will be particularly important if the Commission is unable to eliminate any of the allotments between channels 60–69 that affect public safety frequencies. Los Angeles advocates that, at a minimum, the Commission should adopt a very firm deadline so that public safety agencies can plan accordingly.

70. San Bernardino objects to the 2006 recovery date, maintaining that too early a reversion date may hurt viewers in rural areas dependent on traditional translator services. According to San Bernardino, the Commission's computer channel selection process for DTV treated existing built-out TV translator systems such as San Bernardino's as though they did not exist. San Bernardino argues that these rural locations, which are at or near full channel capacity, might lose one or two channels as the result of DTV allotments transmitting in distant markets, and would find the additional loss of channels 60–69 to be devastating. San Bernardino argues that it is obvious, even if the technology were affordable and available, that such community TV operators will not be able to double their systems and simulcast NTSC and DTV at any time during the transition. San Bernardino also argues that if many rural areas are unable to receive a DTV signal throughout the transition, the residents (perhaps 2–4 million people) will not tolerate a ''lights out'' by a date certain for NTSC television. Val Pereda (''Pereda'') also objects to the 2006 date, contending it will make existing NTSC television sets obsolete and require consumers to buy expensive DTV converters and sets.

71. *Decision.* As discussed above, the Balanced Budget Act requires us to reclaim the analog spectrum by December 31, 2006, and has established specific circumstances under which we are to grant stations an extension of that date. Although we have discretion to set an earlier deadline, we decline to grant in this proceeding the request of Los Angeles for an earlier recovery deadline for NTSC and DTV stations between channels 60–69. On reconsideration of the *Sixth Report and Order,* we are making adjustments to the DTV allotments, as suggested by MSTV, that will make some spectrum available for public safety in the southern California area. We have issued a Notice in another proceeding to seek comment on the service rules for this spectrum that Congress designated for public safety services. We also decline to grant the remaining petitioners' requests for reconsideration of the recovery date. Upon receipt of an appropriate petition, as specified in the Balanced Budget Act, we will examine the circumstances of individual licensees and grant extensions to any that qualify.

G. Must-Carry and Retransmission Consent

72. *Background.* In the *Fifth Report and Order,* the Commission decided to defer consideration of the application of must-carry and retransmission consent requirements to DTV to a future proceeding, in order to obtain a full and updated record on these issues. We noted that, on March 31, 1997, the Supreme Court upheld the constitutionality of the must-carry provisions contained in the Cable Television Consumer Protection and Competition Act of 1992, in *Turner II.* The *Turner II* case, however, did not expressly address the issue of must-carry of digital television signals.

73. *Petition.* Malrite Communications Group (''Malrite'') urges the Commission to modify the ''must carry'' rules to require cable system operators to adopt ''appropriate'' digital technologies, *i.e.,* technologies compatible with broadcast DTV standards. Malrite acknowledges, however, that there is a separate proceeding that will allow the Commission to consider cable compatibility.

74. *Decision.* We find that this reconsideration proceeding is not the proper forum in which to determine the applicability of the must-carry and retransmission consent provisions in the digital context. As discussed above, we intend to issue a Notice in a separate proceeding to seek additional comments regarding these issues. We believe that opening the record for further comments in that proceeding will allow us to reach a well-reasoned decision that will take into account the implications of the *Turner II* decision and the most current information with respect to must-carry and retransmission of DTV signals.

H. Sunshine Act

75. *Background.* The Commission adopted both the *Fifth Report and Order and the Sixth Report and Order* in the DTV proceeding at an open Commission meeting on April 3, 1997, and issued a Sunshine Agenda notice announcing the addition of these two items that morning. The Notice stated that, under § 0.605(e) of the Commission's rules, ''[t]he prompt and orderly conduct of the Commission's Business requires this change and no earlier announcement was possible.''

76. *Petitions/Comments.* The Community Broadcasters Association (''CBA'') argues that the Sunshine Act requires seven days public notice for matters to be discussed at an open meeting. CBA notes that the Sunshine Agenda notice went out on March 27 and did not mention the DTV docket, and that the notice adding the DTV items was not issued until the very day of the meeting. As a result, CBA argues, there was effectively no advance notice that the DTV items would be discussed at the April 3, 1997 meeting as required by the Sunshine Act. Asserting that this violated the Sunshine Act, CBA claims

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[2] The Commission shall extend the date described in subparagraph (A) for any station that requests such extension in any television market if the Commission finds that: (i) One or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market; (ii) digital-to-analog converter technology is not generally available in such market; or (iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market: (I) Do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and (II) do not have either: (a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

Balanced Budget Act of 1997, adding new paragraph 47 U.S.C. 309 (j)(14)(B).

that adoption of the DTV rules at the April 3, 1997 meeting was invalid.

77. MSTV argues in opposition that the Sunshine Act was not violated as claimed by CBA. MSTV notes that the Commission complied with the statutory exception in the Sunshine Act, which allows a meeting without seven days prior notice if such late notice is necessary to conduct the agency's business. MSTV also observes that according to the legislative history of the Sunshine Act, when noncompliance is unintentional and does not harm the interests of any party, the underlying matter need not be reconsidered.

78. *Discussion.* We find CBA's claim that we violated the Sunshine Act to be unwarranted. The Sunshine Act states that:

> [t]he subject matter of a meeting * * * may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

Consistent with these statutory requirements, the April 3, 1997 Sunshine Agenda Notice made such a determination by recorded vote.

79. In addition, § 0.605(e) of the Commission's rules, 47 CFR 0.605(e), makes clear that ''[i]f the prompt and orderly conduct of agency business requires that a meeting be held less than one week after the announcement of the meeting, or before that announcement, the agency will issue the announcement at the earliest practicable time.'' We made such a finding in our April 3, 1997 Sunshine Agenda Notice. Further, CBA has not made a showing of how its or any other party's interests were harmed by the short notice. Accordingly, we believe that there is no basis for a finding that the adoption of the DTV rules at the April 3, 1997 meeting was in violation of the Sunshine Act or otherwise invalid.

I. Other Issues

i. Channels 60–69

80. *Petitions/Comments.* As noted above, the Commission has recently concluded a rule making proceeding reallocating the spectrum from channels 60–69 to a variety of services, including broadcast television. Motorola argues that all licensees should be able to decline to construct DTV facilities on channels 60–69, provided they so inform the Commission, so the spectrum can be used for public safety and other wireless purposes. Motorola seeks to have as few DTV channels as possible allotted to channels 60–69, to allow broadcasters that do have such allotments to change them, and to prevent the Commission from allotting future channels within that spectrum to DTV broadcasters. In this regard, Motorola states that each additional DTV allotment between channels 60 and 69 would preclude the use of at least 6 MHz of spectrum by new wireless users for nearly 8000 square miles, potentially denying new wireless service to millions of customers.

81. *Discussion.* We do not believe that allowing broadcasters to decline to construct DTV facilities on channels 60 through 69 would necessarily serve the public interest. In the *Sixth Report and Order*, we allotted spectrum between channels 60 and 69 to the fewest number of broadcasters possible, in light of our then-pending proceeding examining whether that spectrum should be reallocated. As we noted in the *Channels 60–69 Reallocation Report and Order*, ''the operation of some TV and DTV stations in this spectrum is clearly required to facilitate the DTV transition: and the Budget Act provides for this, stating '[a]ny person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency *after the date on which the digital television service transition period terminates* as determined by the Commission.''' Had other channels been available, they would have been allotted to these broadcasters.

ii. Line-of-Sight to City of License

82. *Petitions/Comments.* Hammett and Edison observes that § 73.625(a)(2) of the rules adopted in the *Fifth Report and Order* requires DTV transmitter sites to be free of a major obstruction in the path over the principal community to be served, but does not require that line-of-sight coverage of the principal community be achieved. Petitioner indicates that the analog TV rule regarding selection of transmitter site (§ 73.685) includes such a corollary requirement and suggests that this apparently inadvertent oversight in the wording of § 73.625(a)(2) be corrected by including the analog TV line-of-sight text. Hammett and Edison states that while engineers may reasonably differ in their opinions whether an obstruction is major, there is no ambiguity in the line-of-sight requirement.

83. *Discussion.* We do not believe the requested change is warranted. In the *Fifth Report and Order*, we attempted to minimize the DTV rules we created to the extent possible. In so doing, we did not include provisions that are admonitory, describing a recommended practice instead of a mandatory requirement. The analog TV line-of-sight rule indicates that the transmitter location ''should be so chosen that line-of-sight can be obtained * * *'' This is not mandatory language.[3] For either NTSC or DTV, there are situations where line-of-sight coverage over the entire community is not possible. In such situations, licensees should avoid obstruction to the extent possible. This should be clear from the ''major obstruction'' rule we adopted, and we believe that it would not be reinforced by the requested additional admonitory language. The decision to exclude it from the new DTV rule was not inadvertent, and Hammett and Edison has not presented any justification for including it upon reconsideration.

III. Conclusion

84. Our decisions in the *Fifth Report and Order* were designed to foster technological innovation and competition, while minimizing government regulation. We continue to believe that our decisions modified herein will ensure that we will soon see a digital television service that provides a host of new and beneficial services to the American public, while preserving free universal television service that serves the ''public interest, convenience, and necessity.''

IV. Administrative Matters

85. *Paperwork Reduction Act of 1995 Analysis.* The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection and/or recordkeeping, labelling, disclosure or record retention requirements on the public. This decision would not increase or decrease burden hours imposed on the public.

86. *Supplemental Final Regulatory Flexibility Analysis.* In the *Fifth Report and Order*, we conducted a Final Regulatory Flexibility Analysis (''FRFA'') as required by the Regulatory Flexibility Act, 5 U.S.C. 603. No petitions to reconsider the FRFA were

[3] Section 73.685(b) of the rules reads as follows:

> Location of the antenna at a point of high elevation is necessary to reduce to a minimum the shadow effect on propagation due to hills and buildings which may reduce materially the strength of the station's signals. In general, the transmitting antenna of a station should be located at the most central point at the highest elevation available. To provide the best degree of service to an area, it is usually preferable to use a high antenna rather than a low antenna with increased transmitter power. The location should be so chosen that line-of-sight can be obtained from the antenna over the principal community to be served; in no event should there be a major obstruction in this path * * *

filed. However, in its petition for reconsideration of the *Fifth Report and Order*, the Personal Communications Industry Association (''PCIA'') asserted that the FRFA's discussion of small businesses that would be affected by the DTV rules and policies should have included mobile licensees, not just other broadcast licensees. Rejecting PCIA's argument, the Commission notes that the FRFA's scope is limited to small entities directly subject to administrative rules, rather than all entities that are indirectly affected by the results that any rules will produce.

87. Also, the Commission on its own motion has made three minor technical changes to the rules adopted in the *Fifth Report and Order* and one minor substantive change, which are explained above. They do not affect the previous FRFA. These minor rule changes do not alter in any significant way the FRFA or the potential effect of the rules on any small entities that may be subject to them. The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with this *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (a)(1)(A).

Ordering Clauses

88. Accordingly, it is ordered that, pursuant to sections 4(i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. § 154(i), (j) 303(r), 307, 309, and 336, this Memorandum Opinion and Order is adopted.

89. It is further ordered that the Petitions for Reconsideration in this proceeding are granted to the extent described above, and are otherwise denied.

90. It is further ordered that the rule changes set forth in this document shall become effective May 1, 1998.

91. It is further ordered that, upon release of this Memorandum Opinion and Order, this proceeding is hereby terminated.

List of Subject in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission,

Magalie Roman Salas,

Secretary.

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.624 is amended by revising paragraph (c) to read as folows:

§ 73.624 Digital Television Broadcast Stations.

* * * * *

(c) Provided that DTV broadcast stations comply with paragraph (b) of this section, DTV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

(1) DTV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under §§ 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting service operation, the DTV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material in the sole judgment of the permittee or licensee. The licensee or permittee is also responsible for all aspects of technical operation involving such services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services on the analog and the DTV spectrum are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

* * * * *

[FR Doc. 98–8458 Filed 3–31–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–8028–02; I.D. 032598E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for Atlantic migratory group king mackerel in the exclusive economic zone (EEZ) of the Atlantic. This closure is necessary to protect the Atlantic group king mackerel resource.

DATES: The closure is effective 12:01 a.m., March 29, 1998, through March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Atlantic migratory group of king mackerel of 2.52 million lb (1.14 million kg).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached or is projected to be reached by publishing a notification in

the **Federal Register**. NMFS has determined that the commercial quota of 2.52 million lb (1.14 million kg) for the Atlantic migratory group of king mackerel was reached on March 28, 1998. Accordingly, the commercial fishery for Atlantic group king mackerel is closed effective 12:01 a.m., local time, March 29, 1998, through March 31, 1998, the end of the fishing year.

From November 1 through March 31, the boundary separating the Atlantic and Gulf migratory groups of king mackerel is 29°25'' N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ. The boundary off the northern Atlantic coastal states is between the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council as specified in § 600.105(a).

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Atlantic group king mackerel in the EEZ of the closed migratory group or retain Atlantic group king mackerel in or from the EEZ of the closed migratory group. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(i), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed migratory group taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed migratory group that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 26, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8561 Filed 3–27–98; 3:25 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–8028–02; I.D. 032598D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., March 29, 1998, through June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS recently implemented (63 FR 8353, February 19, 1998) a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.05 million lb (0.48 million kg). The fishery was opened February 20, 1998 (63 FR 9158, February 24, 1998), to allow harvest of the remaining balance between the newly implemented quota and the former, lower quota of 0.77 million lb (0.35 million kg).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached or is projected to be reached by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 1.05 million lb (0.48 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on March 28, 1998. Accordingly, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, March 29, 1998, through June 30, 1998, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06'' W. long., which is a line directly south from the Alabama/Florida boundary.

NMFS previously determined that the commercial quotas for king mackerel for vessels using run-around gillnet and hook-and- line gears in the Florida west coast subzone of the eastern zone of the Gulf of Mexico were reached and closed those fishery segments on February 24, 1998 (63 FR 10154, March 2, 1998), and March 5, 1998 (63 FR 11628, March 10, 1998), respectively. Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 1998. The Florida west coast subzone extends from 87°31'06'' W. long. (due south of the Alabama/Florida boundary) to (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Gulf group king mackerel in the EEZ of the closed zones or retain Gulf group king mackerel in or from the EEZ of the closed zones. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(ii), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 26, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8560 Filed 3–27–98: 3:25; pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 62
Wednesday, April 1, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 410

RIN 3206–AH94

Personnel Records and Training

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management is issuing proposed regulations governing personnel records and Federal employee training. The proposed regulations amend a statement about maintaining individual employee training records and clarify agency authority for training employees outside the United States.

DATES: Submit comments on or before June 1, 1998.

ADDRESSES: Send or deliver written comments to Steven R. Cohen, Director, Office of Workforce Relations, U.S. Office of Personnel Management, Room 7508, 1900 E Street NW., Washington, DC, 20415–0001.

FOR FURTHER INFORMATION CONTACT: *For 5 CFR Part 293 information*: Linda Brick on 202–606–1126, fax 202–606–1719, or email lmbrick@opm.gov. *For 5 CFR 410 information*: Judith Lombard on 202–606–2431, fax 202–606–2394, or email jmlombar@opm.gov.

SUPPLEMENTARY INFORMATION: These proposed rules affect the training of Government employees. The changes are summarized as follows:

(1) Training Records. The proposed rules remove a parenthetical sentence in 5 CFR 293.403(b)(3) that provides for records of training of 8 hours or more to be placed in an employee's Official Personnel File.

Since publication of the U.S. Office of Personnel Management *Guide to Personnel Recordkeeping*, March 15, 1996 (available from the Superintendent of Documents, U.S. Government Printing Office, or from the U.S. Office of Personnel Management's website at http://www.opm.gov/feddata/html/opf.htm), training documents are no longer maintained as permanent records in an employee's Official Personnel Folder. The parenthetical sentence in 5 CFR 293.403(b)(3) (47 FR 3080) referred to above is no longer accurate and needs to be deleted.

(2) Training Outside the United States. The proposed rules add a section on training outside the continental United States.

A section on training outside the United States was omitted from the final training regulations published December 17, 1996 (61 FR 66189). Previous regulations (47 FR 935 January 8, 1982) included guidance on this subject. Since publication of the revised training rules, agency personnel have often called the U.S. Office of Personnel Management asking questions about approval procedures for training that takes place outside the United States. The proposed new section clarifies agency authority in this area. The new section would be designated as 5 CFR 410.302(f) and would read as follows:

> The head of each agency shall prescribe procedures, as authorized by section 402 of Executive Order No. 11348, for obtaining U.S. Department of State advice before assigning an employee who is stationed within the continental limits of the United States to training outside the continental United States that is provided by a foreign government, international organization, or instrumentality of either.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects

5 CFR Part 293

Archives and records, Freedom of information, Government employees, Health records, and Privacy.

5 CFR Part 410

Education, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is proposing to amend 5 CFR part 293 and 5 CFR part 410 as follows:

PART 293—PERSONNEL RECORDS

Subpart D—Employee Performance File System Records

1. The authority citation for subpart D of 5 CFR part 293 continues to read as follows:

Authority: 5 U.S.C. 552a and 5 U.S.C. 4305 and 4315; E.O. 12107 (December 28, 1978); 5 U.S.C. 1103, 1104, and 1302; 3 CFR 1954–1958 Compilation; 5 CFR 7.2; E.O. 9830, 3 CFR 1943–1948 Compilation.

§ 293.403 [Amended]

2. Section 293.403 paragraph (b)(3) is amended by removing the parenthetical sentence.

PART 410—TRAINING

3. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et. seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

4. Section 410.302 is amended by adding a new paragraph (f) to read as follows:

§ 410.302 Responsibilities of the head of an agency.

* * * * *

(f) The head of each agency shall prescribe procedures, as authorized by section 402 of Executive Order No. 11348, for obtaining U.S. Department of State advice before assigning an employee who is stationed within the continental limits of the United States to training outside the continental United States that is provided by a foreign government, international organization, or instrumentality of either.

[FR Doc. 98–8515 Filed 3–31–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. 98AMA–FV–956–1; FV98–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Hearing on Proposed Amendment of Marketing Agreement and Order No. 956

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 956, hereinafter referred to as the ''order.'' The order regulates the handling of Walla Walla Sweet Onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order. The Walla Walla Sweet Onion Committee (committee), responsible for local administration of the order, has submitted several proposed amendments. The proposed amendments would broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a proposal is included to make a minor change in the committee name.

DATES: The hearing will begin at 10:00 a.m. in Walla Walla, Washington, on April 7, 1998, and, if necessary, will continue the next day beginning at 9:00 a.m.

ADDRESSES: The hearing will be held at the WSU/Walla Walla County Extension Office, 317 West Rose Street, Fifth Street entrance, Walla Walla, Washington 99362.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2043, Fax: (503) 326–7440; or Anne M. Dec, Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P. O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The committee submitted proposals to broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a committee proposal is included to change the name of the committee from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee.

The committee works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the committee in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHWEST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals: Proposals submitted by the Walla Walla Sweet Onion Committee:

Proposal No. 1

Add a new § 956.14 to read as follows:

§ 956.14 Grading.

Grading is synonymous with ''prepare for market'' and means the sorting or separation of Walla Walla Sweet Onions

into grades, sizes, and packs for market purposes.

Proposal No. 2

Add a new § 956.15 to read as follows:

§ 956.15 Grade and size.

Grade means any of the officially established grades of onions, including maturity requirements and size means any of the officially established sizes of onions as set forth in the United States standards for grades of onions or amendments thereto, or modifications thereof, or variations based thereon, or States of Washington or Oregon standards of onions or amendments thereto or modifications thereof or variations based thereon, recommended by the committee and approved by the Secretary.

Proposal No. 3

Add a new § 956.16 to read as follows:

§ 956.16 Pack.

Pack means a quantity of Walla Walla Sweet Onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

Proposal No. 4

In § 956.20, revise paragraph (a) to read as follows:

§ 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Marketing Committee, consisting of ten members, is hereby established. The committee shall consist of six producer members, three handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

* * * * *

Proposal No. 5

Add a new § 956.60 to read as follows:

§ 956.60 Marketing policy.

(a) *Preparation.* Prior to each marketing season, the committee shall consider and prepare a proposed policy for the marketing of Walla Walla Sweet Onions. In developing its marketing policy, the committee shall investigate relevant supply and demand conditions for Walla Walla Sweet Onions. In such investigations, the committee shall give appropriate consideration to the following:

(1) Market prices for sweet onions, including prices by variety, grade, size, quality, and maturity, and by different packs;

(2) Supply of sweet onions by grade, size, quality, maturity, and variety in the production area and in other sweet onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for Walla Walla Sweet Onions;

(5) Orderly marketing of Walla Walla Sweet Onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy, and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

Proposal No. 6

Amend § 956.62 by revising the section to read as follows:

§ 956.62 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of Walla Walla Sweet Onions by any one or more of the methods hereinafter set forth whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of Walla Walla Sweet Onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of Walla Walla Sweet Onions differently, for different varieties or packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, markings or pack of the container or containers, which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof;

(4) Regulate the handling of Walla Walla Sweet Onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this part whenever the Secretary finds that such amendment would tend to effectuate the declared policy of the Act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever the Secretary finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the Act.

Proposal No. 7

Revise § 956.64 to read as follows:

§ 956.64 Minimum quantities.

During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this part, each handler may handle up to, but not to exceed, 2,000 pounds of Walla Walla Sweet Onions per shipment without regard to the inspection requirements of this part: *Provided,* That such Walla Walla Sweet Onion shipments meet the minimum requirements in effect at the time of the shipment pursuant to § 956.62. The committee, with the approval of the Secretary, may recommend modifications to this section and the establishment of such other minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, and 956.63, or any combination thereof.

Proposal No. 8

Add a new undesignated center heading and a new § 956.70 to read as follows:

Inspection

§ 956.70 Inspection and certification.

(a) During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this subpart, no handler shall handle Walla Walla Sweet Onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 956.63 and 956.64, or both. Upon recommendation of the committee, with approval of the Secretary, inspection providers and certification requirements may be

modified to facilitate the handling of Walla Walla Sweet Onions.

(b) Regrading, resorting, or repacking any lot of Walla Walla Sweet Onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship Walla Walla Sweet Onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That such inspection requirements on regraded, resorted, or repacked Walla Walla Sweet Onions may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all Walla Walla Sweet Onions that are required to be inspected and certified in accordance with this section shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When Walla Walla Sweet Onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 9

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 25, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–8434 Filed 3–31–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–10–AD]

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This proposal would require shimming the tail rotor drive system bearing supports (bearing supports). This proposal is prompted by reports of cracked bearing hangar support arms in the area of the fillet radius. The actions specified by the proposed AD are intended to prevent failure of the bearing supports, which could result in excessive tail rotor drive system vibration, loss of tail rotor drive, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, (817) 222–5159, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98-SW-10-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW–10-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on BHTC Model 407 helicopters. Transport Canada advises that there have been some occurrences of a gap between the bearing support and the bearing hanger on the tailboom. They further advise that this situation, if not corrected, could lead to serious vibration of the tail rotor drive shaft, and eventually, to total disintegration of the shaft.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 407–97–7, dated February 27, 1997, which specifies a procedure for shimming

between the bearing supports and the bearing hangers on the tailboom. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–97–08, dated May 30, 1997, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design registered in the United States, the proposed AD would require shimming the bearing supports within the next 25 hours time-in-service. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 160 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the shimming of the bearing support, and that the average labor rate is $60 per work hour. Required parts would cost approximately $30 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $43,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 98–SW–10–AD.

Applicability: Model 407 helicopters, serial numbers 53000, 53002 through 53065, 53067, and 53069 through 53075, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent failure of the bearing supports, which could result in excessive tail rotor drive system vibration, loss of tail rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Shim the tail rotor drive system bearing supports in accordance with the Accomplishment Instructions contained in Bell Helicopter Textron Alert Service Bulletin No. 407–97–7, dated February 27, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Rotorcraft Certification.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–97–08, dated May 30, 1997.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8469 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–39–AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France (Eurocopter) Model AS 332C, L, and L1 helicopters. This proposal would require initial and repetitive inspections of the tail rotor shaft flapping hinge retainers (retainers) for cracks. This proposal is prompted by a report of high vibrations occurring on a helicopter while in service due to a cracked retainer. The actions specified by the proposed AD are intended to detect cracks on the retainers that could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Comments must be received by May 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–39–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter Model AS 332C, L, and L1 helicopters. The DGAC advises that cracking of the retainers could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter France Service Bulletin No. 05.00.41, dated January 29, 1996, which specifies visually checking the entire outside area of the five flapping hinge retainers, part number 330A33.3165.00, for cracks after the last flight of each day. If it cannot be determined by the visual inspection that no crack is present, the service bulletin also specifies that a dye penetrant crack detection inspection be performed. The DGAC classified this service bulletin as mandatory and issued DGAC AD 96–074–057(B), dated March 27, 1996, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model AS 332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require a dye penetrant inspection of the retainers for cracks prior to the first flight of each day.

The FAA estimates that 4 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hours per helicopter to accomplish each dye penetrant inspection, 2.0 work hours to replace the retainer on each helicopter, and that the average labor rate is $60 per work hour. Required parts, if replacement of the retainers on the tail rotor blades is necessary, would cost approximately $56,900 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $252,080, assuming that the retainers on the tail rotor blades are replaced on all 4 helicopters and each helicopter is dye penetrant inspected 200 times per year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97–SW–39–AD.

Applicability: AS 332C, L, and L1 helicopters, with tail rotor shaft flapping hinge retainer, part number 330A33.3165.00, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks on a tail rotor shaft flapping hinge retainer (retainer) that could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Prior to further flight, and thereafter before the first flight of each day, perform a dye penetrant inspection of each retainer for cracks.

(b) If a crack is found on any retainer, replace it with an airworthy retainer.

Note 2: Eurocopter Service Bulletin No. 05.00.41, dated January 29, 1996, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–074-057(B), dated March 27, 1996.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–8467 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–133–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Models DG–100 and DG–400 gliders. The proposed AD would require repetitively inspecting the airbrakes to assure they retract at their outboard end first, and repairing the airbrakes if they do not retract at their outboard end first; and repetitively inspecting the airbrake torque tube in the fuselage for cracks or deformations, and reinforcing or replacing, as necessary, if cracks or deformations are found in the airbrake torque tube. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent overloading of the airbrake control system caused by free play between the bellcrank and airbrake plate, which could result in failure of the operating lever of the airbrake torque tube in the fuselage.

DATES: Comments must be received on or before May 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–133–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG-Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–133–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–133–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all DG-Flugzeugbau Models DG–100 and DG–400 gliders. The LBA reports two weld joint failures of the airbrake torque tube and incidents of free play between the bellcrank and airbrake plate. This freeplay could prevent the airbrake cap from being flush with the wing surface at the outboard wing at the outboard end.

These conditions, if not corrected in a timely manner, could result in overloading of the airbrake control

system and failure of the operating lever of the airbrake torque tube in the fuselage.

Relevant Service Information

Glaser-Dirks has issued DG-Flugzeugbau Technical Note No. 301/18, No. 323/9, and No. 826/34, dated November 4, 1996, which specifies inspecting the airbrakes to assure they retract at their outboard end first, and repairing the airbrakes if they do not retract at their outboard end first; and repetitively inspecting the airbrake torque tube in the fuselage for cracks or deformations, and reinforcing or replacing, as necessary, if cracks or deformations are found in the airbrake torque tube. The procedures for accomplishing these actions are included in the following:

- DG-Flugzeugbau GmbH Working instructions No. 1 for Technical Note No. 301/18, 323/9, and 826/34, dated November 4, 1996, for the airbrake retraction inspection and repair; and
- DG-Flugzeugbau GmbH Working instructions No. 2 for Technical Note No. 301/18, 323/9, and 826/34, dated November 4, 1996, for the airbrake torque tube inspection and reinforcement or replacement.

The LBA classified this service information as mandatory and issued German AD 97–011, dated January 30, 1997, in order to assure the continued airworthiness of these gliders in Germany.

The FAA's Determination

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Models DG–100 and DG–400 gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the airbrakes to assure they retract at their outboard end first, and repairing the airbrakes if they do not retract at their outboard end first; and repetitively inspecting the airbrake torque tube in the fuselage for cracks or deformations, and reinforcing or replacing, as necessary, if cracks or deformations are found in the airbrake torque tube. Accomplishment of the proposed installation would be required in accordance with the service information previously referenced.

Compliance Time of the Proposed AD

Although the problems identified with the airbrake control system would only be unsafe during flight, this condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 45 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per glider to accomplish the proposed inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,800, or $240 per glider.

These figures are based only on the initial inspections and do not take into account the costs of any repetitive inspections or reinforcements and modifications that would be needed based on the results of the proposed inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes would incur, or the number of airbrake control systems that would require modification, reinforcement, or repair.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 97–CE–133–AD.

Applicability: Models DG–100 and DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent overloading of the airbrake control system caused by free play between the bellcrank and airbrake plate, which could result in failure of the operating lever of the

airbrake torque tube in the fuselage, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, inspect the airbrakes to assure they retract at their outboard end first in accordance with DG-Flugzeugbau GmbH Working instructions No. 1 for Technical Note No. 301/18, 323/9, and 826/34, dated November 4, 1996. If the airbrakes do not retract at their outboard end first, prior to further flight, repair the airbrakes in accordance with the above-referenced working instructions.

(b) Within the next 30 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, inspect the airbrake torque tube in the fuselage for cracks or deformations in accordance with DG-Flugzeugbau GmbH Working instructions No. 2 for Technical Note No. 301/18, 323/9, and 826/34, dated November 4, 1996. If cracks or deformations are found in the airbrake torque tube, prior to further flight, reinforce or replace, as necessary, in accordance with the above-referenced working instructions.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to service information referenced in this AD should be directed to DG-Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 97–011, dated January 30, 1997.

Issued in Kansas City, Missouri, on March 24, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8463 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–12 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Model PC–12 airplanes. The proposed action would require replacing and re-routing the power return cables on the starter generator and generator 2, inserting a temporary revision to the pilot operating handbook (POH), and installing a placard near the standby magnetic compass. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent directional deviation on the standby magnetic compass caused by an overload of electrical current in the airplane structure, which, if not corrected, could result in flight-path deviation during critical phases of flight in icing conditions and instrument meteorologic conditions (IMC).

DATES: Comments must be received on or before May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–08–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–08–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–08–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–12 airplanes. FOCA reports that directional deviations are occurring on the standby magnetic compass when some systems are in operation during flight. A magnetic field created by additional electric loads caused unreliable readings on the compass while the airplane was flying in IMC and the pilot was relying on the Attitude and Heading Reference Systems (AHRS).

These conditions, if not corrected, could result in a deviation of the

airplane flight path during critical phases of flight.

Relevant Service Information

Pilatus has issued PC XII Service Bulletin No. 24–002, Revision No. 1, dated September 20, 1996, which specifies procedures for re-routing and replacing the power return cables on the starter generator and generator 2, inserting a temporary revision in the pilot operating handbook (POH), and installing a placard near the standby magnetic compass.

FOCA classified this service bulletin as mandatory and issued Swiss AD number HB 96–140, dated March 18, 1996, and Swiss AD number HB 97–001, dated January 1, 1997, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, FOCA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Model PC–12 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing and re-routing the power return cables on the starter generator and generator 2; inserting a temporary revision to the POH; and installing a placard near the standby magnetic compass, using at least ⅛-inch letters, with the following words:

STANDBY COMPASS FOR CORRECT READING CHECK: WINDSHIELD DE-ICE LH & RH HEAVY & COOLING SYSTEM OFF''

Accomplishment of the proposed actions would be in accordance with Pilatus PC XII Service Bulletin No. 24–002, Revision No. 1, dated September 20, 1996.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost will be provided free from the manufacturer upon request. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,800 or $720 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 97–CE–08–AD.

Applicability: Model PC–12 airplanes (serial numbers 101 through 147), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent directional deviation on the standby magnetic compass caused by an overload of electrical current in the airplane structure, which, if not corrected, could result in flight-path deviation during critical phases of flight in icing conditions and Instrument Meteorologic Conditions (IMC), accomplish the following:

(a) Re-route and replace the starter generator cable and the generator 2 power return cables with new cables of improved design in accordance with the Accomplishment Instructions section in Pilatus PC XII Service Bulletin (SB) No. 24–002, Revision No. 1, dated September 20, 1996.

(b) Remove the temporary revision titled ''Electrical Cables,'' dated March 7, 1996 from the Pilot Operating Handbook (POH) and insert a temporary revision titled ''Electrical Cables'' Rev. 1, dated July 12, 1996, in accordance with the Accomplishment Instructions section in Pilatus PC XII SB No. 24–002, Revision No. 1, dated September 20, 1996.

(c) Install a placard with the following words (using at least ⅛-inch letters) near the standby magnetic compass in accordance with the Accomplishment Instructions section in Pilatus PC XII SB No. 24–002, Revision No. 1, dated September 20, 1996:

''STANDBY COMPASS FOR CORRECT READING CHECK: WINDSHIELD DE-ICE LH & RH HEAVY & COOLING SYSTEM OFF''

(d) Incorporating the AFM revisions and installing a placard, as required by paragraphs (b) and (c) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to Pilatus PC XII Service Bulletin No. 24–002, Revision No. 1, dated September 20, 1996, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41 6196 233; facsimile: +41 41 6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD Nos. HB–96–140, dated March 18, 1996 and HB 97–001 dated, January 1, 1997.

Issued in Kansas City, Missouri, on March 24, 1998.

Carolanne Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8462 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes. This proposal would require modification of the check valves of the airfoil de-icing system, or replacement of the check valves with improved valves. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the check valves, which could result in loss of airfoil de-icing capability during single engine operation, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–134–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B and SAAB 2000 series airplanes. The LFV advises that, during single engine operation tests on Model SAAB 340 series airplanes, check valves in the airfoil de-icing system were found to have failed. The same check valves are used in the airfoil de-icing system of Model SAAB 2000 series airplanes. Failed check valves could result in loss of airfoil de-icing system operation during single engine operation. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–30–080, dated November 21, 1997, and Service Bulletin 2000–30–012, dated November 21, 1997, which describe procedures for modification of the check valves of the airfoil de-icing system, or replacement of the check valves with improved valves. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LFV classified these service bulletins as mandatory and issued Swedish airworthiness directive SAD No. 1–120, dated November 24, 1997, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has

kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 125 Model SAAB 340B and SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $30,000, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 97-NM–134-AD.

Applicability: Model SAAB 340B series airplanes, serial numbers 240 through 430 inclusive; Model SAAB 2000 series airplanes, serial numbers 002 through 050 inclusive, and 052; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the check valves, which could result in loss of airfoil de-icing capability during single engine operation, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 5 months after the effective date of this AD, modify the left- and right-hand check valves of the airfoil de-icing system, or replace the check valves with improved valves, in accordance with Saab Service Bulletin 340–30–080, dated November 21, 1997 (for Model SAAB 340B series airplanes), or Saab Service Bulletin 2000–30–012, dated November 21, 1997 (for Model SAAB 2000 series airplanes), as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–120, dated November 24, 1997.

Issued in Renton, Washington, on March 26, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8541 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–32–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes. This proposal would require a one-time inspection to detect discrepancies of certain diode mounting assemblies on specified electrical panels; follow-on actions; and repair or replacement with serviceable components, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent overheating and possible failure of certain electrical diodes, which could result in loss of electrical service to one or more airplane electrical circuits.

DATES: Comments must be received by May 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–32-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–32–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 series airplanes. The CAA advises that overheated diodes have been found on electrical panel 27C. The cause of this overheating has been attributed to looseness of the diodes, which could cause poor electrical contact. These conditions, if not corrected, could result in failure of certain electrical diodes, which could result in loss of electrical service to one or more airplane electrical circuits.

Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin SD360–39–04, Revision 1, dated January 12, 1998, which describes procedures for a one-time visual inspection to detect discrepancies of the diodes on electrical panels 1C, 2C, 12P, 27C, and 51C; follow-on actions; and repair or replacement with serviceable components, if necessary. The discrepancies include loose or overheated diodes, missing lock washers, overheated diode studs, and overheated electrical cables. The follow-on actions involve installing new lock washers, if necessary; and re-torquing the diodes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 008–09–97 (undated) in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and This Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer should be contacted if certain damage is found, this proposal would require repair or replacement of discrepant parts with serviceable parts in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 88 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $73,920, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by

contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 98–NM–32–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating and possible failure of certain electrical diodes, which could result in loss of electrical service to one or more airplane electrical circuits, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time visual inspection to detect discrepancies of certain diode mounting assemblies on electrical panels 1C, 2C, 12P, 27C, and 51C, in accordance with Shorts Service Bulletin SD360–39–04, Revision 1, dated January 12, 1998.

(1) If no discrepancy is found, prior to further flight, perform the follow-on actions specified in the service bulletin in accordance with the Accomplishment Instructions of the service bulletin.

(2) If any discrepancy is found, prior to further flight, repair or replace the discrepant diode mounting assembly component with a serviceable component in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 008–09–97 (undated).

Issued in Renton, Washington, on March 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8537 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–U

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Electronic Freedom of Information Act; Implementation

AGENCY: United States Information Agency.

ACTION: Proposed rule.

SUMMARY: This rule establishes requirements and conditions necessary for the implementation of the new Electronic Freedom of Information Act (FOIA) Amendments of 1996, 5 U.S.C. 552, as amended by Pub. L. 104–231. This addition to the present regulation will establish criteria that will enable FOIA requesters to better understand how documents of the Agency are maintained and handled electronically.

DATES: Comments must be submitted on or before May 1, 1998.

ADDRESSES: Public comments should be mailed to the FOIA/PA Unit, Office of the General Counsel, United States Information Agency (USIA), Room M–20, 301 4th Street, SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: FOIA/PA Unit on (202) 619–5499, or write to the Unit, Office of the General Counsel, United States Information Agency (USIA), Room M–29, 301 4th Street, SW, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: This amendment to the Freedom of Information Act, 5 U.S.C. 552, establishes criteria which the Agency will follow for maintaining and handling electronic records. Regulatory provisions include application of requirements to electronic format information and to such information made available electronically honoring form or format requested. Additionally, this amendment includes standards for judicial review, timely responses, including Agency consideration of priority requests, computer redactions, and new reporting information to Congress. This amendment is required by the Electronic Records Act of 1996. It has been determined that this addition is not a significant regulatory action and it will not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof;

(4) Have a significant economic impact on a substantial number of small entities; or

(5) Impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Comments are encouraged and will be taken under advisement.

List of Subjects in 22 CFR Part 503

Freedom on Information.

Accordingly, 22 CFR Part 503 is amended as set forth below.

PART 503—FREEDOM OF INFORMATION ACT REGULATION

1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 552 Reform Act of 1986 as amended by Pub. L. 99–570; sec. 1801–1804; 13 U.S.C. 8; E.O. 10477, as amended; 47 FR 9320, Apr. 2, 1982, E.O. 12356, 5 U.S.C. 552 (1988 & Supp. III 1991) as amended by Freedom of Information Reform Act of 1986, Pub. L. No. 99–570, title I, Sec. 1801–1804, 100 Stat. 3207, 3207–48–50 (1986) (codified at 5 U.S.C. 552 (1988)); 22 U.S.C. 2658 (1988); 5 U.S.C. 301 (1988); 13 U.S.C. 8 (1988); Executive Order No. 10477, 3 CFR 958 (1949–1953) as amended by Executive Order No. 10822, 3 CFR 355 (1959–1963), Executive Order No. 12292, 3

CFR 134 (1982); reprinted in 22 U.S.C. 1472 (1988); Executive Order No. 12356, 3 CFR 166 (1983), reprinted in 50 U.S.C. 401 (1988); Executive Order No. 12598; Electronic Records Act of 1996, Pub. L. 104–231, 110 Stat. 3048.

2. By adding § 503.9 to read as follows:

§ 503.9 Electronic Records Act of 1996.

(a) *Introduction.* This part applies to all records of the United States Information Agency, including all of its foreign posts. Congress enacted the FOIA to require Federal agencies to make records available to the public through public inspection and at the request of any person for any public or private use. The increase in the Government's use of computers enhances the public's access to Government information. This new section addresses and explains how records will be reviewed and released when the records are maintained in electronic format. Documentation not previously subject to the FOIA when maintained in a non-electronic format is not made subject to FOIA by this law.

(b) *Definitions.*

Compelling need. Obtaining records on an expedited basis because of an imminent threat to the life or physical safety of an individual, or urgently needed by an individual primarily engaged in disseminating information to the public concerning actual or alleged Federal Government activities.

Discretionary disclosure. Records or information normally exempt from disclosure will be released whenever it is possible to do so without reasonably foreseeable harm to any interest protected by an FOIA exemption.

Electronic reading room. The room provided which makes electronic information available for review by the public.

Electronic records. Records and information (including e-mail) which are created, stored, and retrievable by electronic means.

Expedited processing. FOIA requesters can seek faster processing of their requests under specific criteria.

Form or format requests. Providing the record in any form or format asked for by the requester if the record is readily reproducible in that form or format.

Multitrack processing. Processing requests along different tracks depending upon the date of receipt, amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing.

Reading room. A place to review records previously released that the Agency considers likely to be the subject of subsequent FOIA requests.

Reasonable efforts. Standard governing the search for and production of information in electronic form.

Record. A ''record'' under the FOIA includes electronically stored information. All Government records are subject to the Act, regardless of the form in which they are stored.

Redaction. Deleting part of a record to prevent disclosure of material covered by an exemption.

Storage media. A record in electronic format can be requested just like a record on paper, or in any other format, within enumerated exceptions, and can potentially be fully disclosed under the law. The format in which data is maintained is not relevant under the FOIA.

(c) *Electronic format of records.*

(1) Materials such as agency opinions and policy statements (available for public inspection and copying) are also available by computer. To set up an appointment to view such records in hard copy or via computer, please contact the FOIA/PA Unit on (202) 619–5499.

(2) The Agency will make available for public inspection and copying, both by computer and in hard copy, those records that have been previously released in response to FOIA requests, when the agency determines the records have been or are likely to be the subject of future requests.

(3) The Agency provides both electronically and in hard copy a ''Guide'' on how to make an FOIA request, and an Index of all Agency records that may be requested under the FOIA.

(4) The Agency may delete identifying details when it publishes or makes available the index and copies of previously-released records to prevent a clearly unwarranted invasion of personal privacy.

(i) The Agency will indicate the extent of any deletions made from the previously-released records by marking the place on the record where the deletion was made, if feasible.

(ii) The Agency will not reveal information about deletions if such disclosure would harm an interest protected by an exemption.

(d) *Honoring form or format requests.* The Agency will aid requesters by providing records and information in the form requested, including electronic format, if we can readily reproduce them in that form or format. However, if we cannot accommodate the requester, we will provide responsive, nonexempt information in a reasonably accessible form.

(1) The Agency will make a reasonable effort to search for records kept in an electronic format. However, if the effort would significantly interfere with the operations of the Agency or the Agency's use of its computers, we will consider the effort to be unreasonable.

(2) The Agency need not create documents that do not exist, but computer records found in a database rather than in a file cabinet may require the application of codes or some form of programming to retrieve the information. This application of codes or programming of records will not amount to the creation of records.

(3) Except in unusual cases, the cost of computer time will not be a factor in calculating the two free hours of search time. In those unusual cases, where the cost of conducting a computerized search significantly detracts from the Agency's ordinary operations, no more than the dollar equivalent of two hours of manual search time shall be allowed. For searches conducted beyond the first two hours, the Agency shall only charge the direct costs of conducting such searches.

(e) *Technical feasibility of redacting non-releasable material.* The Agency will make every effort to indicate the place on the record where a redaction of non-releasable material is made, and an FOIA citation noting the applicable exemption for the deletion will also be placed at the site. If unable to do so, we will notify you of that fact.

(f) *Ensuring timely response to requests.* The Agency will make every attempt to respond to FOIA requests within the prescribed 20 working-day time limit. However, processing some requests may require additional time in order to properly screen material against the inadvertent disclosure of material covered by the exemptions.

(1) *Multitrack first-in first-out processing.* (i) Because the Agency has been able to process its requests without a backlog of cases, USIA will not institute a multitrack system. Those cases that may be handled easily, because they require only a few documents or a simple answer, will be handled immediately by each specialist.

(ii) If you wish to qualify for processing under a faster track, you may limit the scope of your request so that we may respond more quickly.

(2) *Unusual Circumstances.* (i) The Agency may extend for a maximum of ten working days the statutory time limit for responding to an FOIA request by giving notice in writing as to the reason for such an extension. The reasons for such an extension may include: the need to search for and collect requested records from multiple

offices; the volume of records requested; and, the need for consultation with other components within the Agency.

(ii) If an extra ten days still does not provide sufficient time for the Agency to deal with your request, we will inform you that the request cannot be processed within the statutory time limit and provide you with the opportunity to limit the scope of your request and/or arrange with us a negotiated deadline for processing your request.

(iii) If you refuse to reasonably limit the scope of your request or refuse to agree upon a time frame, the Agency will process your case as it would have, had no modification been sought. We will make a diligent, good-faith effort to complete our review within the statutory time frame.

(3) *Aggregation of requests.* The Agency will aggregate requests that clearly involve related material that should be considered as a single request.

(i) If you make multiple or related requests for similar material for the purpose of avoiding costs, the Agency will notify you that we are aggregating your requests, and the reasons why.

(ii) Multiple or related requests may also be aggregated, such as those involving requesters seeking similar information, for the purposes of negotiating the scope of the requests and schedule, but you will be notified in advance if we intend to do so.

(g) *Time periods for Agency consideration of requests.*—(1) *Expedited processing.* The Agency will authorize expedited access to requesters who show a compelling need for a fast response, but the burden is on the requester to prove that expedition is appropriate. The Agency will determine within ten days whether or not to grant a request for expedited access and will notify the requester of its decision.

(2) *Compelling need for access.* Failure to obtain the records within an expedited deadline must pose an imminent threat to an individual's life or physical safety; or the request must be made by someone primarily engaged in disseminating information, and who has an urgency to inform the public about actual or alleged Federal Government activity.

(3) *How to request expedited access.* We will be required to make factual and subjective judgments about the circumstances cited by requesters to qualify them for expedited processing. To request expedited access, your request must be in writing and it must explain in detail your basis for seeking expedited access. The categories for compelling need are intended to be narrowly applied:

(i) *A threat to an individual's life or physical safety.* A threat to an individual's life or physical safety should be imminent to qualify for expedited access to the records. You must include the reason why a delay in obtaining the information could reasonably be foreseen to cause significant adverse consequences to a recognized interest.

(ii) *Urgency to inform*. The information requested should pertain to a matter of a current exigency to the American public, where delay in response would compromise a significant recognized interest. The person requesting expedited access under an ''urgency to inform,'' must be primarily engaged in the dissemination of information. This does not include individuals who are engaged only incidentally in the dissemination of information. ''Primarily engaged'' requires that information dissemination be the main activity of the requester. A requester only incidentally engaged in information dissemination, besides other activities, would not satisfy this requirement. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

(4) *Expansion of Agency response time*. The new law provides that agencies now have 20 working-days to respond to all FOIA requests. However, when possible, we will continue to respond to requests within the former 10 working-day time frame.

(5) *Estimation of matter denied*. the Agency will try to estimate the volume of any denied material and provide the estimate to the requester, unless doing so would harm an interest protected by an exemption.

(h) *Computer redaction*. The Agency will identify the location of deletions in the released portion of the records, and where technologically feasible, will show the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption.

(i) *Report to Congress*. In addition to the information already provided to Congress in the Agency's Annual Report on FOIA Activities, the Agency will include the following: the number of Privacy Act (PA) requests handled; the number of backlogged requests; the number of days taken to process requests; the number of staff devoted to processing FOIA requests; whether a claimed (b)(3) statute has been upheld in court; and the costs of litigation. The Agency's annual report is available both in hard copy and by computer telecommunications. In the past, annual reports were required based on a calendar year and were provided to Congress on or before March 1 of the following year. However, the new law has changed the annual reporting requirements now to be related to the Agency's fiscal year. Thus, the Annual Report to Congress on FOIA activities for 1997 only encompassed the first nine months (January through September), and was reported by March 1, 1998. The FY 98 report will begin in October 1997 and conclude at the end of September 1998. This report will be presented to the Department of Justice instead of Congress, by February 1, 1999, and Justice will report all Federal agency FOIA activity through electronic means.

(j) *Reference materials and guides*. The Agency has available both in hard copy and by computer a guide for requesting records under the FOIA and an index and description of all major information systems of the Agency. The guide is a simple explanation of what the FOIA is intended to do, and how you can use it to access USIA records. The Index explains the types of records that may be requested from the Agency through FOIA requests and why some records cannot, by law, be made available by USIA.

Dated: March 26, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–8472 Filed 3–31–98; 8:45 am]

BILLING CODE 8230–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204 and 211

[Docket No. 98–2]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is issued to inform the public that the Copyright Office is proposing new fees for special services. The effect of these proposed amendments is to increase existing fees and to institute fees for existing special services as authorized in the Copyright Act. These fees are limited to such special services, and each fee is based on the actual cost to the Office of providing that service. The proposed amendments include revisions to existing fees covering full-term storage, special handling of copyright

registration, and other expedited services. They also institute new fees for existing services such as processing appeals and handling underfunded deposit accounts.

DATES: Written comments are due by May 11, 1998.

ADDRESSES: An original and fifteen copies of the comments should be addressed, if sent by mail, to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, United States Copyright Office, James Madison Memorial Building, Room 403, First Street and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Patricia Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, or telephone (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Authorization

The Copyright Office is funded annually by congressional appropriation; however, the total appropriation includes a credit based on an estimate of the projected fee income to be received during a fiscal year for services provided.

Title 17, United States Code, section 708, authorizes the Register of Copyrights to require payment of fees for services specifically described in section 708(a)(1)-(9) such as registration, recordation, and certification. These ''statutory'' fees must be set or approved by Congress. See Pub. L. No. 105–80, 111 Stat. 1529 (1997). In addition, paragraph 708(a)(10) permits the Register to require for ''any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.'' Commonly referred to as discretionary fees, these latter fees relate to services not within the Office's ordinary functions such as special handling and other expedited services and may be set by the Register based on the cost to the Office of providing the service.

Although the Office was authorized to increase statutory fees in 1995, it did not do so. It did, however, increase discretionary fees in 1994. See 58 FR 38369 (July 28, 1994).

Congress continues to encourage every federal agency to recover the costs of its operations. Legislation was passed by the 105th Congress and signed into law on November 13, 1997, which amended 17 U.S.C. 708(b) to give the Register in calendar year 1997, and in any subsequent calendar year, the authority to increase fees specified in 17 U.S.C. 708(a), following study of the costs incurred by the Office for providing services. Pub.L. No. 105–80, 111 Stat. 1529 (1997). In that legislation Congress directed the Office to set fees that recover the reasonable costs, but to consider whether a proposed fee is fair and equitable and gives due consideration to the objectives of the copyright system.

B. Studies Emphasizing Cost Recovery

In the past few years there have been several studies of existing Copyright Office fees. The General Accounting Office (GAO) reviewed Copyright Office practices and operations and issued a final report on May 9, 1997, titled *Report to the Chairman, Committee on the Judiciary, U.S. Senate, INTELLECTUAL PROPERTY: Fees Are Not Always Commensurate with the Costs of Services.* GAO concluded that ''Congress may wish to consider whether the Copyright Office should achieve full cost recovery through fees. GAO/RCED–97–113, at 7–8, May 9, 1997. GAO also issued a report following a management review of the Library which recommended full recovery of copyright costs (*Library of Congress: Opportunities to Improve General and Financial Management*, GAO/T-GGD/AIMD–96–115, May 7, 1996). Congress has also indicated that the Office should recover a greater percentage of its costs.

The Copyright Office has directed a comprehensive study by an outside consultant of the operating costs involved in providing services to users to determine whether fees should be adjusted. Working with a task force within the Office, the consultant examined existing fees for services, identified costs for other services, and calculated the costs of providing each service.

C. Office Assessment of Fees

The Office then examined the fees identified by the consultant in light of operational and other considerations and determined what it should propose as a fee for each service. The Office has endeavored to ensure that each service it provides not only supports copyright owners and users but also recovers reasonable costs. It is aware that special services provided to identifiable recipients should carry a charge that recovers the cost of providing those services.

Based on its analysis, the Office is proposing a number of new fees for existing special services.[1] In the past the costs of these special services have been absorbed by the Office. The new fees include fees for handling underfunded deposit accounts, and processing appeals. The Office is also proposing adjustments to existing fees for special services.

II. Institution of New Fees for Special Services

A. Deposit Accounts

The Copyright Office maintains a system of deposit accounts for the convenience of those who frequently use its services. A deposit account holder can charge copyright fees against the balance in his or her deposit account instead of sending separate remittances with applications and other requests for services. One advantage for the holder of a deposit account is that the Office may begin the work immediately if sufficient funds are in the account.

The Office proposed a number of fees for maintaining deposit accounts in 1994. 59 FR 38400 (July 28, 1994). Based on the comments it received, the Office decided not to move forward with any charges at that time. Moreover, despite considerable expense to the Office in maintaining deposit accounts, it is not now proposing a maintenance fee for deposit accounts primarily because the use of deposit accounts is beneficial both to the holder and the Office. The Office is, however, proposing two new fees related to handling underfunded deposit accounts. A deposit account holder may avoid both of these charges by keeping his or her deposit account balance at a level sufficient to cover all claims submitted. A new system that produces timely deposit account statements is in place to assist account holders in regulating their business.

1. Service fee for Deposit Account Overdraft—$70.00

The first new fee would cover overdrafts caused when a deposit account holder has insufficient funds to process claims. When deposit account funds are not sufficient to cover registration, the Office sets aside the claim until the account holder is contacted and funds are forwarded to the Office. To offset expenses incurred for handling an overdrawn account, the

[1] The Office does not plan to amend statutory fees until next year; after extensive opportunity for public hearings, it will propose a new schedule for Congressional review.

Office proposes to charge a $70.00 fee per instance (not per claim). This fee will be deducted from the replenishment funds forwarded by the deposit account holder.

2. Dishonored Check Fee From Deposit Account Holder—$35.00

The Office is also proposing a fee when a deposit account holder's check is dishonored because of insufficient funds in an applicant's account, or for other banking problems. By the time the Office discovers that a check cannot be negotiated, it has already expended staff time and resources to process the paperwork. The Office proposes to charge a fee of $35.00 to cover the administrative expenses incurred in processing the dishonored check. This fee will be deducted immediately or, if the account is in arrears, upon successful replenishment.

B. Short Fee Service Charge—$20.00

A ''short fee'' is a remittance paid by cash, check, or money order to the Copyright Office which is not sufficient to pay for the requested service. Any time new statutory fees are instituted, the Office gets a number of fees that are insufficient. For the first year after the last statutory fee adjustment, 20% of the cash fees were insufficient. When a fee is insufficient, the Office deposits the money submitted, holds the claim, and asks the remitter for additional money to complete the fee. To recover the administrative cost of processing this material, the Office proposes to charge a $20.00 short fee per submission.

Although the Office is still getting short fees from the 1991 increase on statutory fees, it does not plan to implement a short fee service charge until on or about January 1, 2000. The Office will notify the public of the new statutory fees.

C. Appeals—1st Appeal $200.00, 2nd Appeal $500.00, Additional Related Claim $20.00

The Office has long accepted appeals from initial refusals to register a claim to copyright, but there has been no separate charge above the initial registration fee for reconsidering the claim. The Office has a two level review of appeals; the first request for reconsideration goes to the Examining Division. Since 1995, the second request for reconsideration has been reviewed by a three member Board of Appeals. The processing of appeals is very labor intensive, and the fee to recover actual costs would be more than three times the fee the Office is proposing. The Office determined, however, that the fee for appeals should be less since U.S. applicants must attempt to register before initiating a copyright infringement suit and must exhaust administrative remedies before initiating an action against the Register under the Administrative Procedure Act for refusal to register. The Office is, therefore, proposing a fee of $200.00 for first appeals, plus an additional fee of $20.00 for each related claim after the first for a group of related works on which one appeal is filed. The Office is proposing a fee of $500.00 for second appeals, with an additional fee of $20.00 for each related claim. For example, if an appellant appeals the rejection of four related jewelry designs, the cost of the first appeal would be $260.00; if the same appeal goes to the Board, the cost would be $560.00.

D. Secure Tests Processing Fee Per Hour—$60.00

Secure tests are nonmarketed tests administered under supervision at specified cites on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. Publishers of these tests ensure the confidentiality of the tests by protecting and retaining the test materials. To maintain secrecy, the Office examines these test materials in the presence of the applicant, but outside the regular work station, and returns the test material to the applicant, keeping only a small portion of material photocopied from the original as the permanent deposit of identifying material. The applicant thus gets special treatment. In the past, the Office has made no assessment for special processing of these secure tests; it is proposing a $60.00 per hour fee to recover costs for labor and special arrangements.

III. Fee Adjustments to Fees for Special Services

A. The Office is Also Proposing the Following Increases to Current Fees for Special Services

1. Copying fee—$15.00 Minimum, $1.00/Page up to First 15, $.50 per Page Thereafter

The Office will continue to duplicate records maintained in its custody under conditions detailed in the applicable regulatory provisions. The Office proposes to change its current charges for copying of black and white material that cannot leave the custody of the Office to $1.00 per page for the first 15 pages. For large documents the Office proposes a fee based on a sliding scale; it proposes a fee of $.50/page for every page after the fifteenth. Thus the proposed fee for copying a 50 page document will be $32.50. The higher copying cost for the first 15 pages of this material is justified because of the time staff needs to set up the material copied and to verify the complete accuracy of the copy. The minimum fee for black and white material will be $15.00. The Office is not changing its copying fee for color material.

2. Inspection Fee—$65.00

The Office currently charges a daily fee of $10.00 to a customer who wishes to inspect deposits of Copyright Office records on the premises. The service is provided by the Certifications and Documents Section of the Information and Reference Division. A Copyright Office employee monitors the inspection to ascertain that no copying of the deposit takes place. The proposed fee of $65.00 will be charged in combination with the applicable search fee to locate and retrieve the material being inspected.

3. Special Handling fee for Registration—$500.00 Additional Claim $50.00

Although the effective date of registration is the date the application, required fee, and deposit are received, it takes the Office several months to process a claim and mail the certificate of registration. Special handling is granted at the discretion of the Register as a special service to copyright applicants who have a compelling reason for the expedited issuance of a certificate of registration. A request for special handling is granted in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate expedited service.

Special handling affects every step of the registration or recordation process. A claim that receives special handling must be processed outside the regular system of first in—first out, necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of a claim to assure both that it moves expeditiously through the necessary procedures and that it can be located quickly should the need arise.

The fee for special handling was last increased in 1994 to $330 plus the registration fee. 59 FR 38369 (July 28, 1994). The proposed new fee is $500.00 plus the registration fee. The terms under which a request for special handling is approved or denied will not be altered. If a claim is eligible for special handling, the Copyright Office

makes every effort to process the claim or notify the applicant of any problem in processing the claim within five working days after the request has been approved. To ensure expedited treatment, the claimant should deliver the material to the Public Information Office.

4. Special Handling fee for Recordation of a Document—$330.00

The Office will maintain its fee of $330.00 for this service. The same factors involved in special handling for registration claims described above apply almost entirely to special handling for recordation of a document. One major difference is that the Office has centralized most aspects of the documents recordation process. This centralization means that special handling for documents is less costly to the Office than special handling for registration and no fee change is necessary.

5. Full Term Storage of Deposits of Published Works—$365.00

Full term storage of unpublished works is mandated by the Copyright Act. The Office's policy is to retain deposit copies of published works for at least five years from the date of deposit; if practicable, it retains works of visual arts for ten years. The Office also offers full term retention of deposit copies of published works upon payment of a fee. The purpose of this service is to assure copyright owners that the deposit copies of their published works will be kept in the Copyright Office's custody for the full term of copyright, which can be up to 125 years.

Congress authorizes a fee for full term storage in 17 U.S.C. 704(e). Previously the cost for this service was $270.00; however, due to increased costs, the Office proposes a fee of $365.00.

B. Surcharge for Expedited Certifications and Documents Services

Fees for services requested on an expedited basis from the Certification and Documents Section must be increased to reflect more accurately the Office's actual costs and expenses. The Office is aware, however, that some of these services can only be performed by the Office and that fact was considered in proposing new fees.

Those who request special services do so for the same purposes that lead to requests for special handling. Special service requests require disruption of normal work flow; therefore, the service is more costly to the Office. These are all unique services, and the increased costs take into account the fact that extraordinary efforts are often required both in time and places searched. Often Copyright Office employees must travel to an off-site storage facility to expedite a search.

1. Additional Certificate, in Process Search, Copy of Assignment—$75.00/Hour

The current fee for providing an expedited additional certificate, performing an in-process search for material related to a claim, or furnishing a copy of an assignment or certification is $50.00 per hour. The Office proposes a $75.00 per hour fee for any of these services.

2. Copy of Registered Deposit—First Hour $95.00; Each Additional Hour $75.00

The fee for providing an expedited copy of a registered deposit which is stored off-site in a Copyright Office storage facility is currently $70.00 per hour. The Office proposes a fee for these services of $95.00 for the first hour required to perform the service, and $75.00 for each additional hour or portion thereof.

3. Copy of Correspondence File—First Hour $95.00, Each Additional Hour $75.00

The fee for expedited provision of a copy of a correspondence file whether stored on the Copyright Office premises or at an off-site Copyright Office storage facility is $70.00 per hour. The Office proposes a new fee of $95.00 per hour for the first hour and $75.00 for each additional hour.

All of these expedited service fees are surcharges and will be added to the regular charge for the service provided. For example, if an applicant wants an expedited copy of a deposit and it takes the Office one hour to locate the deposit, the $95.00 charge will be added to the regular search fee for one hour, plus the appropriate copying fee.

C. Reference and Bibliography Search Fee—$125.00/Hour, $95.00/Hour

Upon request, the Office's Reference and Bibliography Section will perform an expedited search of its records. Currently, the Office charges $100.00 for the first hour and $50.00 for each additional hour for such searches. The proposed fee for performing an expedited search is $125.00 for the first hour, and $95.00 per hour or portion of an hour thereafter. These expedited service fees are in addition to the regular charge for a reference search. Charges for providing searches, certifications, or copies that are not made on an expedited basis will remain at the same level.

D. Mask Work Registration—$75.00

The Office proposes a fee of $75.00 to recover the full cost to the Office of processing claims in mask works. Mask works are provided an exclusive commercial right different from copyright as provided in the Semiconductor Chip Protection Act. Claimants seeking mask work protection receive registration and the accompanying legal benefits, including an extended term of protection.

E. Recordation of Notices of Intent to Enforce (NIE)—$30.00, Each Group of 10 Additional Titles $10.00

Although the consultants' study established that a higher fee would be necessary to recover costs of recording NIE's, the Office does not propose any amendment since the cost of publicizing the new charge would be more than the Office would recover with a higher fee. Moreover, the vast majority of rightsholders are no longer eligible to file NIE's with the Office.

List of Subjects

37 CFR Part 201

Copyright, General Provisions.

37 CFR Part 202

Copyright, Registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 204

Privacy.

37 CFR Part 211

Mask Work Protection, Fees.

In consideration of the foregoing, parts 201, 202, 203, 204, and 211 of 37 CFR chapter II are amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.32 Fees for Copyright Office special services.

2. Section 201.32 is amended by revising the special services fee chart to read as follows:

* * * * *

Special services	Fees
1. Service charge for deposit account overdraft	$70
2. Service charge for dishonored deposit account replenishment check	35
3. Service charge for short fee payment	
4. Appeals	20
a. First appeal	
Additional claim in related group	200
b. Second appeal	20
Additional claim in related group	500
5. Secure test processing charge, per hour	20
6. Copying charge, first 15 pages, per page	60
Each additional page	1
7. Inspection charge	50
8. Special handling fee for a claim	65
Each additional claim using the same deposit	500
9. Special handling for recordation of a document	50
10. Full-term storage of deposits	330
11. Surcharge for expedited Certifications and Documents Section services	365
a. Additional certificates, per hour	
b. In-process searches, per hour	75
c. Copy of assignment, per hour	75
d. Certification, per hour	75
e. Copy of registered deposit	75
First hour	
Each additional hour	95
f. Copy of correspondence file	75
First hour	
Each additional hour	95
12. Surcharge for expedited Reference & Bibliography searches	75
First hour	125
Each additional hour	95

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.23 [Amended]

4. Section 202.23(e)(1) and (2) are amended by removing ''$270.00'' each place it appears and adding in its place ''$365.00.''

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

5. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a)(1).

§ 203.6 [Amended]

6. Section 203.6(b)(2) is amended by removing ''$7 for up to 15 pages and $.45 per page over 15.'' and adding in its place ''$15.00 for up to 15 pages and $.50 per page over 15.''.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

7. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a).

§ 204.6 [Amended]

8. Section 204.6(a) is amended by removing ''$7 for up to 15 pages and $.45 per page over 15.'' and adding in its place ''$15.00 for up to 15 pages and $.50 per page over 15.''

PART 211—MASK WORK PROTECTION

9. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

§ 211.3 [Amended]

10. In § 211.3(a)(1) and (2) remove ''$20.00'' each place it appears and add in is place ''$75.00.''

11. In § 211.3(a)(7), remove ''$330'' and add in its place ''$500.00.''

Dated: March 24, 1998.

David O. Carson,

General Counsel.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–8207 Filed 3–31–98; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[FO Docket No. 91-171, 91-301; FCC 98-33]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Second Further Notice of Proposed Rule Making* seeks comment regarding proposed rules that would prohibit cable systems from overriding local broadcaster's emergency related programming with voluntary state and/or local level Emergency Alert System (EAS) messages. The Commission also seeks to insure that EAS rules will allow members of the public to receive the most current and accurate emergency information possible, whether the information is originated by a cable operator, or an over the air broadcast station.

Cost information related to the purchase and installation of selective channel override equipment at cable systems is requested. Cable systems may need to install this equipment if rules requiring local broadcasters emergency programming be uninterrupted by cable systems EAS warnings are adopted. The Commission requests comment as to

who should bear cost related to this additional switching equipment.

DATES: Comments due by April 20, 1998; Reply comments due by May 5, 1998.

ADDRESSES: To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Formal and informal comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, NW., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: EAS Staff, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Further Notice of Proposed Rule Making* in FO Dockets 91–171/91–301, adopted March 4, 1998, and released March 19, 1998.

The full text of this *Second Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, D.C. 20336; phone: (202) 857–3800, facsimile: (202) 857–3805.

Synopsis of Second Further Notice of Proposed Rule Making

The FCC adopted a *Second Further Notice of Proposed Rule Making* requesting comment regarding rules that would require cable systems to prevent the interruption of local broadcast station emergency programming when activating their EAS equipment during voluntary state and/or local activations.

EAS replaced the Emergency Broadcast System (EBS), and uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. EAS, compared to EBS, includes more sources capable of alerting the public and specifies new equipment standards and procedures to improve alerting capabilities.

In 1994, the Commission issued a *Report and Order* (59 FR 67090; December 28, 1994) in this proceeding dealing largely with the participation by broadcast stations in EAS, but also directing that wired cable TV systems participate, and specifying the nature of this participation. The *Report and Order* added a new Part 11 to the FCC's rules containing EAS regulations. At the same time, the Commission issued a *Further Notice of Proposed Rule Making (FNPRM)* (59 FR 67104; December 28, 1994). The *Second Report and Order* (Second R&O) modified the requirements in the Report and Order applying to cable systems and addressed issues raised in the FNPRM. The *Second R&O* established dates that phase cable systems into EAS participation. This phase in process was done in order to ease the economic burden that EAS and related equipment impose on cable systems that serve less than 5,000 subscribers.

The *Second Further Notice of Proposed Rule Making* seeks comment regarding amending Commission rules to insure that the public has access to the most accurate and relevant emergency information available. Many broadcast television stations maintain independent news and weather gathering facilities and personnel that may provide the public with emergency information. Any state or local information provided by these station resources may then be transmitted to the public as part of the station's programming and is not required to be sent via an EAS activation. The EAS rules require activations only in the event of a national emergency or for testing purposes.

On December 31, 1998, cable systems are scheduled to begin participation in EAS. Cable headend facilities, in many instances, operate in an automated or unattended manner often without news or weather department support. Commission rules currently require most cable systems to place an aural and visual message on all channels transmitting programming, including broadcast channels that are carried on that system, when activating the EAS equipment. Cable systems serving less than 5,000 subscribers per headend are required to place a visual interruption on all channels in order to alert viewers of the presence of an EAS alert on an information channel. This information channel will transmit the audio and visual EAS message to the cable viewers. The Commission has also established rules that allow cable systems to enter into written agreements with broadcasters that relieve the cable operator from providing EAS messages on the channels of the cable system used to transmit broadcast stations.

The Commission, noting concerns raised by broadcasters, requests comment regarding the rules regarding broadcast channel overrides. We seek to determine if allowing the establishment of written agreements will allow cable subscribers viewing broadcast stations efficient access to emergency information. We also ask if the Commission should establish specific guidelines that broadcast stations must comply with in order to avoid channel overrides resulting from EAS messages sent by a cable system. The Commission is also requesting cost information related to the purchase and installation of selective override equipment at cable facilities. Finally, the Commission requests comment on which party should bear any additional cost of this equipment, the broadcaster, the cable system or a combination of the two.

Paperwork Reduction Act of 1995

This Second Further Notice of Proposed Rule Making does not contain either a proposed or modified information collection.

Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. We also seek comment on the number of entities affected by the proposed rules that are small businesses, and request that commenters identify whether they themselves are small businesses. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Second Further Notice of Proposed Rule Making*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

Legal Basis

The *Second Further Notice of Proposed Rule Making* is issued under the authority contained in Sections 4(i), 4(j), 303(r), 624(g) and 706 (c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(b), 303(r), 544(g) and 706(c).

List of Subjects in 47 CFR Part 11

Emergency alert system.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8500 Filed 3–31–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant ''Helianthus paradoxus'' (Pecos Sunflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Helianthus paradoxus* (Pecos or puzzle sunflower) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This species is dependent on desert wetlands for its survival. It is known from 22 sites in Cibola, Valencia, Guadalupe, and Chaves Counties, New Mexico, and from two sites in Pecos County, Texas. Threats to this species include drying of wetlands from groundwater depletion, alteration of wetlands (*e.g.* wetland fills, draining, impoundment construction), competition from non-native plant species, excessive livestock grazing, mowing, and highway maintenance. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

DATES: Comments from all interested parties must be received by June 1, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna Road, NE, Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charlie McDonald, Botanist, at the above address, or telephone 505/761–4525 ext. 112; facsimile 505/761–4542.

SUPPLEMENTARY INFORMATION:

Background

Pecos sunflower was first collected on August 26, 1851, by Dr. S.W. Woodhouse on the Sitgreaves expedition to explore the Zuni and Lower Colorado Rivers. The location was given as ''Nay Camp, Rio Laguna'' (Sitgreaves 1853). The Rio Laguna is now called the Rio San Jose and the collection site would have been somewhere between Laguna Pueblo and Bluewater in Cibola County, New Mexico. This specimen was identified as *Helianthus petiolaris* (prairie sunflower) by Dr. John Torrey, a botanical expert at the New York Botanical Garden (Sitgreaves 1853). It was not until 1958 that Dr. Charles Heiser named *Helianthus paradoxus* as a new species citing two known specimens—the type specimen collected September 11, 1947, by H.R. Reed west of Fort Stockton in Pecos County, Texas; and the Woodhouse specimen collected in New Mexico (Heiser 1958).

Heiser (1965) did hybridization studies to help resolve doubts about the validity of Pecos sunflower as a true species. There was speculation that the plant Heiser named as a new species was in fact only a hybrid between *Helianthus annuus* (common sunflower) and prairie sunflower. Heiser's studies showed that Pecos sunflower is a fertile plant that breeds true with itself. He was able to produce hybrids between Pecos sunflower and both common sunflower and prairie sunflower, but these hybrids were of low fertility. These results support the validity of Pecos sunflower as a true species. Rieseberg et al. (1990) published results of molecular tests of the hypothesized hybrid origin of Pecos sunflower. They used electrophoresis to test enzymes and restriction-fragment analysis to test ribosomal and chloroplast DNA. Their work showed Pecos sunflower is a true species of ancient hybrid origin with the most likely hybrid parents being common sunflower and prairie sunflower.

Pecos sunflower is an annual member of the sunflower family (Asteraceae). It grows 1.3–2.0 meters (m) (4.25–6.5 feet (ft)) tall and is branched at the top. The leaves are opposite on the lower part of the stem and alternate at the top, lance-shaped with three prominent veins, and up to 17.5 centimeters (cm) (6.9 inches (in)) long by 8.5 cm (3.3 in) wide. The stem and leaf surfaces have a few short stiff hairs. The flower heads are 5.0–7.0 cm (2.0–2.8 in) in diameter with bright yellow rays. Flowering is from September to November. Pecos sunflower looks much like the common sunflower seen along roadsides throughout the west, but differs from common sunflower in having narrower leaves, fewer hairs on the stems and leaves, slightly smaller flower heads, and later flowering.

Pecos sunflowers grow in soils that are permanently saturated. Areas that maintain these conditions are most commonly desert wetlands (cienegas) associated with springs, but they may also include stream margins and the margins of impoundments. When plants are associated with impoundments, the impoundments typically have replaced natural cienega habitats. Plants commonly associated with Pecos sunflower include *Limonium limbatum* (Transpecos sealavender), *Samolus cuneatus* (limewater brookweed), *Flaveria chloraefolia, Scirpus olneyi* (Olney bulrush), *Phragmites australis* (common reed), *Distichlis* sp. (saltgrass), *Sporobolus airoides* (alkali sacaton), *Muhlenbergia asperifolia* (alkali muhly), *Juncus mexicanus* (Mexican rush), *Suaeda calceoliformis* (Pursh seepweed), and *Tamarix* spp. (saltcedar) (Poole 1992, Sivinski 1995). All of these species are good indicators of saline soils. Studies by Van Auken and Bush (1995) indicate Pecos sunflower grows in saline soils, but seeds germinate and establish best when high water tables reduce salinities near the soil's surface.

Until 1990, Pecos sunflower was known only from three extant sites. Two sites were in Pecos County, Texas, and one site was in Chaves County, New Mexico (Seiler *et al.* 1981). Searches of suitable habitats in Pecos, Reeves, and Culbertson counties, Texas, during 1991 failed to result in the discovery of any new Texas sites or in the rediscovery of any sites believed to have been extirpated (Poole 1992). Searches in New Mexico from 1991 through 1994, however, led to discovery of a significant number of new sites in that State (Sivinski 1995). Pecos sunflower is presently known from 24 sites that occur in 5 general areas. These areas are Pecos County, Texas, in the vicinity of Fort Stockton; Chaves County, New Mexico, from Dexter to just north of Roswell; Guadalupe County, New Mexico, in the vicinity of Santa Rosa; Valencia County, New Mexico, along the lower part of the Rio San Jose; and, Cibola County, New Mexico, in the vicinity of Grants. There are 2 sites in the Fort Stockton area, 11 in the Dexter to Roswell area, 8 in the Santa Rosa area, 1 along the lower Rio San Jose, and 2 in the Grants area.

Most of the Pecos sunflower sites are limited to less than 2.0 hectares (ha) (5.0 acres (ac)) of wetland habitat with some being only a fraction of a hectare. Two sites, one near Fort Stockton and one near Roswell, are considerably more

extensive. The number of plants at a site varies from less than 100 to several hundred thousand for the 2 extensive sites. Because Pecos sunflower is an annual, the number of plants at a site can fluctuate drastically from year to year with changes in water conditions. Pecos sunflower is totally dependent on the persistence of its wetland habitat. Even large populations will disappear if the wetland dries.

The sites where Pecos sunflower occurs are owned and managed by a variety of Federal, State, Tribal, municipal, and private interests. Federal agencies that manage sites are the U.S. Fish and Wildlife Service (Service), Bureau of Land Management, and National Park Service. There are plants in one State park. The cities of Roswell and Santa Rosa both have sites on municipal property. One site is owned and managed by the Laguna Indian Tribe. There are seven different private individuals or organizations that own sites or parts of sites. Some plants grow on State or Federal highway rights-of-way.

Four of the sites are on property managed principally for wildlife and the conservation of endangered species. Two of these are major sites on Bitter Lake National Wildlife Refuge near Roswell, New Mexico. The refuge has a series of six spring-fed impoundments totaling about 300 ha (750 ac). These impoundments are managed with high water levels in winter followed by a spring and summer drawdown that mimics a natural water cycle. This regime provides abundant habitat for Pecos sunflowers that thrive in almost solid stands at the edges of many of the impoundments. A small site with less than 100 plants occurs on Dexter National Fish Hatchery near Dexter, New Mexico. Plants first appeared here several years ago after saltcedar was removed to restore a wetland. One site near Fort Stockton, Texas, is owned and managed by The Nature Conservancy of Texas. The principal feature at this preserve is a large desert spring that harbors two species of endangered fish and three species of endemic snails, and supports an extensive stand of Pecos sunflowers that grow for about 1.2 kilometers (km) (0.75 miles (mi)) along the spring run.

Loss or alteration of wetland habitats is the main threat to Pecos sunflower. The lowering of water tables through aquifer withdrawals mostly for irrigated agriculture; the diversion of water from wetlands for irrigation, livestock, or other uses; wetland filling; and the invasion of wetlands by saltcedar and other non-native species have all destroyed or degraded desert wetlands in the past. These activities still continue. Mowing of rights-of-way and some municipal properties regularly destroys some plants. Livestock will eat Pecos sunflowers, particularly if other green forage is scarce. There has been some unregulated commercial sale of this plant in the past and some plant collection for breeding programs to improve commercial sunflowers. Pecos sunflower will naturally hybridize with common sunflower. The extent to which back crosses might be affecting the genetic integrity of small Pecos sunflower populations is presently unknown, but worthy of concern.

Previous Federal Action

Federal government actions on Pecos sunflower began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. That report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823), accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act. The notice further indicated the Service's intention to review the status of the plants named therein. As a result of this review, the Service published a proposed rule in the **Federal Register** on June 16, 1976 (41 FR 24523), to determine approximately 1,700 vascular plants to be endangered species pursuant to section 4 of the Act. This list, which included *Helianthus paradoxus*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), which included *Helianthus paradoxus* as a category 1 candidate species. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Revised lists of plants under review for listing were published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). These notices retained *Helianthus paradoxus* as a category 1 candidate. In the **Federal Register** notices of review on February 28, 1996, and September 19, 1997 (61 FR 7596, 62 FR 49398), the Service ceased using multiple category designations and included *Helianthus paradoxus* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Helianthus paradoxus* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually from 1984 through 1997. Publication of this proposal constitutes the final 1-year finding for the petitioned action.

The processing of this proposed rule conforms with the Service's final listing priority guidance issued on December 6, 1996 (61 FR 64475), and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action. Additionally, the Service stated in the guidance that, ''Effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3'' (61 FR 64480). The Service has begun implementing a more balanced listing program, including processing Tier 3 actions. The processing of this Tier 3 action follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helianthus paradoxus* Heiser (Pecos sunflower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Wetland habitats in the desert Southwest are both ecologically important and economically valuable. Wetlands cover only about 195,000 ha (482,000 ac)(0.6 percent) of New Mexico (Fretwell *et al.* 1996). This is a reduction of about 33 percent from the wetland acreage that existed 200 years ago (Dahl 1990). Wetlands in Texas cover about 3,077,000 ha (7,600,000 ac), a decline of about 52 percent from the State's original wetland acreage (Dahl 1990). The loss of springs in western Texas may be a better indicator of wetland losses that affect Pecos sunflower than figures for the State as a whole. Within the historical range of Pecos sunflower in Pecos and Reeves counties, only 13 of 61 (21 percent) springs remain flowing (Brune 1981).

The lowering of water tables due to groundwater withdrawals for irrigated agriculture has reduced available habitat for Pecos sunflower, particularly in Texas. Beginning around 1946, groundwater levels fell as much as 120 m (400 ft) in Pecos County and 150 m (500 ft) in Reeves County due to heavy pumping for irrigation. As a result, most of the springs in these counties went dry. Groundwater pumping has lessened in recent decades due to the higher cost of pumping water from greater depths, but rising water tables or resumption of spring flows are not expected (Brune 1981). Texas water law provides no protection for remaining springs. The law is based on the right of first capture that lets any water user pump as much groundwater as can be put to a beneficial use without regard to overall effects on the aquifer.

Habitats for Pecos sunflower in Chaves County, New Mexico, have been affected by groundwater pumping in the past, but water tables are now rising due to State-directed efforts at monitoring and conservation. These efforts are the result of a court ruling that requires New Mexico to deliver larger volumes of Pecos River water to Texas than in the past. There are presently no major groundwater withdrawals taking place in the vicinity of the other Pecos sunflower sites in New Mexico.

The introduction of non-native species, particularly saltcedar, is a major factor in the loss and degradation of southwestern wetlands. Several species of saltcedar were introduced into the United States for ornament, windbreaks, and stream bank stabilization in the 1800s. They invaded many western riverine systems from the 1890s to the 1930s and increased rapidly from the 1930s to the 1950s, by which time they occupied most of the available and suitable habitat in their main area of North American distribution in Arizona, New Mexico, and western Texas (Christensen 1962, Horton 1977). Saltcedar will out-compete and displace native wetland vegetation, including Pecos sunflower. At Dexter National Fish Hatchery, Pecos sunflower was recorded for the first time in the summer of 1996 after salt cedar was removed to rehabilitate a wetland (Radke 1997).

A total of 24,124 ha (59,586 ac) of saltcedar infest 35 of the national wildlife refuges in 12 western states. In southern California, Nevada, Utah, Arizona, and New Mexico, 27 of the 41 refuges (66 percent) are infested. Saltcedar affects 2,000 ha (5,000 ac) at Bitter Lake National Wildlife Refuge where the most extensive Pecos sunflower population occurs (U.S. Fish and Wildlife Service 1996). There have been many projects on refuges to remove saltcedar. These projects are labor intensive and reinvasion of saltcedar is a continuing problem.

Some wetlands where Pecos sunflower occurs have been either filled or impounded. Part of a wetland near Grants, New Mexico, was filled for real estate development along a major highway. The development predated knowledge that Pecos sunflower grows there, so it is unknown if any plants were actually destroyed. Wetlands in Santa Rosa were impounded many years ago for a fish hatchery that is now abandoned. Pecos sunflowers grow on the dams of some of the impoundments. The extent of the former wetland is unknown, so it is uncertain whether the impoundments have increased or decreased sunflower habitat.

Habitat is being altered through mowing on some highway rights-of-way and some municipal properties where Pecos sunflower occurs. In Santa Rosa, vegetation including some Pecos sunflowers is often mowed around some of the old fish hatchery ponds that are now used for recreational fishing. In another part of town an open boggy area is mowed when dry enough. In years when it is too wet to mow, a stand of Pecos sunflowers develops. Mowing of highway rights-of-way in Santa Rosa and near Grants may be destroying some plants. In Texas, the only population in a highway right-of-way was fenced several years ago to protect it from mowing and other activities.

B. Overutilization for commercial, recreational, scientific, or educational purposes

There has been some commercial trade in Pecos sunflower (Poole, Texas Parks and Wildlife Department, Austin, *in litt.* 1991). The trade was undertaken by an organization interested in preserving rare species of indigenous crop plants through their dissemination and cultivation. There has also been some collecting for crop breeding research (Seiler *et al.* 1981). With its tolerance for high salinity, Pecos sunflower was considered a good candidate for the introduction of salt tolerance into cultivated sunflowers. Some Pecos sunflower sites are both small and easily accessible. These sites could be harmed by repeated uncontrolled collecting.

C. Disease or Predation

Livestock will eat Pecos sunflowers, particularly when other green forage is scarce. Livestock tend to pull off the flower heads. If an area is grazed for several years in succession when the plants are flowering, the soil seed bank will be diminished and the population will eventually decline. There are several examples of Pecos sunflowers being absent from habitat that is heavily grazed, but growing in similar nearby habitat that is protected from grazing. In these instances, grazing is the most likely cause of the plant's absence from otherwise suitable habitat.

D. The inadequacy of existing regulatory mechanisms

Pecos sunflower is a New Mexico State endangered plant species listed in NMNRD Rule 85–3 of the State Endangered Plant Species Act (9–10–10 NMSA). This act primarily regulates scientific collecting, commercial transport, and sale of Pecos sunflower. It does not protect plants on private lands or require collecting permits for Federal employees working on lands within their jurisdictions (Sivinski and Lightfoot 1995). The State act lacks the interagency coordination and conservation requirements found in section 7 of the Federal Endangered Species Act. Further, State listing fails

to generate the level of recognition or promote the opportunities for conservation that result through Federal listing. Pecos sunflower is not listed as an endangered, threatened, or protected plant under the Texas Endangered Plant Species Act.

E. Other natural or manmade factors affecting its continued existence

Natural hybrids between Pecos sunflower and common sunflower have been seen at Pecos sunflower sites in both Texas and New Mexico. Human activities have substantially increased the habitat for common sunflower and it may now have more contact with Pecos sunflower than in the past. The hybrid plants have low fertility, but they are not completely sterile (Heiser 1965).

Backcrosses of these hybrids to Pecos sunflower could detrimentally affect the genetic integrity of Pecos sunflower populations. Study is needed to determine if such backcrosses could occur to the degree that common sunflower might genetically swamp small Pecos sunflower populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list Pecos sunflower as threatened. The drying of springs due to ground water pumping, the diversion of water for agriculture and other uses, the degradation of wetlands from intensive livestock grazing, and the invasion of saltcedar and other non-native plants into many wetlands has significantly reduced the habitat of this species. Most remaining populations are vulnerable because these activities continue to destroy habitat or keep it in a degraded condition. While not in immediate danger of extinction, the Pecos sunflower is likely to become an endangered species in the foreseeable future if present trends continue.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Pecos sunflower. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for Pecos sunflower is not prudent because both of the above situations exist. There has been some commercial trade in Pecos sunflower, which was due largely to its rarity. There are several documented instances of other species of commercially valuable rare plants being collected when their localities became known. In 1995, at least 48 plants of the endangered *Pediocactus knowltonii* (Knowlton cactus) were taken from a monitoring plot at the species' only known locality (Sivinski, New Mexico Forestry and Resources Conservation Division, Santa Fe, *in litt.* 1996). In the early 1990s, the rediscovery of *Salvia penstemonoides* (big red sage) in Texas led to the collection of thousands of seeds at the single rediscovery site (Poole, *in litt.* 1991).

Listing contributes to the risk of over-collecting because the rarity of a plant is made known to far more people than were aware of it previously. Designating critical habitat, including the required disclosure of precise maps and descriptions of critical habitat, would further advertise the rarity of Pecos sunflower and provide locations of occupied sites causing even greater threat to this plant from vandalism or unauthorized collection. Many of the Pecos sunflower sites are small, have few individuals, and are easily accessible. The plants at these sites would be particularly susceptible to indiscriminate collection if publication of critical habitat maps made their exact locations known.

Critical habitat designation, by definition, directly affects only Federal agency actions. Private interests own 12 of the 24 Pecos sunflower sites. For the most part, activities constituting threats to the species on these lands, including alterations of wetland hydrology, competition from non-native vegetation, grazing, and agricultural and urban development, are not subject to the Federal review process under section 7. Designation of critical habitat on private lands provides no benefit to the species when only non-Federal actions are involved.

Activities on Federal lands and some activities on private lands require Federal agencies to consult with the Service under section 7. There are few known sites for Pecos sunflower and habitat for the species is limited. Given these circumstances, any activity that would adversely modify designated critical habitat would likely also jeopardize the species' continued existence. Thus, in this case, the Federal agency prohibition against adverse modification of critical habitat would provide no additional benefit beyond the prohibition against jeopardizing the species.

Occupied habitat for Pecos sunflower occurs on a national wildlife refuge and national fish hatchery administered by the Fish and Wildlife Service, a national monument administered by the National Park Service, and Federal lands administered by the Bureau of Land Management. Because these occupied habitats are well known to the managers of these Federal lands, no adverse modification of this habitat is likely to occur without consultation under section 7 of the Act. Because of the small size of the species' habitat, any adverse modification of the species' critical habitat would also likely jeopardize the species' continued existence. Designation of critical habitat for Pecos sunflower on Federal lands, therefore, is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The elevated profile that Federal listing affords enhances the likelihood that conservation activities will be undertaken. The Act provides for possible land acquisition and cooperation with the States. The protection required of Federal agencies

and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Federal agencies that manage occupied habitat for Pecos sunflower are the ones most likely to be involved in section 7 activities. These agencies are the Service, Bureau of Land Management, and National Park Service. Other agencies with potential section 7 involvement include the U.S. Army Corps of Engineers through its permit authority under section 404 of the Clean Water Act, the Natural Resources Conservation Service that provides private landowner planning and assistance for various soil and water conservation projects, the Federal Highway Administration for highway construction and maintenance projects that receive funding from the Department of Transportation, the Bureau of Indian Affairs that has trust responsibilities for certain activities on Indian lands, and various agencies of the Department of Housing and Urban Development that undertake homeowner mortgage insurance and community development programs.

Listing the Pecos sunflower would provide for development of a recovery plan for the plant. A recovery plan would bring together private, State, and Federal efforts for conservation of this species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan would also describe site-specific management actions necessary to achieve conservation and survival of the species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to the states of New Mexico and Texas for management actions promoting the protection and recovery of Pecos sunflower.

Because many of the known sites for Pecos sunflower are on private land, the Service will pursue conservation easements and conservation agreements with willing private landowners to help maintain and/or enhance habitat for the plant. Under a cooperative program between the State of New Mexico and the Service, all private landowners have been contacted. The importance of Pecos sunflower and the consequences for the private landowner of having it listed under the Act have been explained. No agreements have been established to date, but several landowners have indicated a willingness to continue discussing the subject.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of ''cultivated origin'' appears on their containers. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Pecos sunflower is not common in cultivation or in the wild, and there has been only limited commercial trade in the species. Therefore, it is anticipated that few trade permits will ever be sought or issued. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248–6649, facsimile 505/248–6922). Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.72.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 (prohibited acts) of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the species' range. Collection of this species from Federal lands would violate section 9, although in appropriate cases permits could be issued to allow collection for scientific or recovery purposes.

Generally, activities of landowners on private lands or of others on lands not under Federal jurisdiction will not violate section 9 of the Act even if the activities result in destruction of Pecos sunflowers. These activities might include filling of wetlands, construction or maintenance of drainage ditches, construction of impoundments or other livestock watering facilities, mowing or clearing, and livestock grazing. However, some of these activities may require Federal, State, and/or local approval under other laws or regulations; filling of wetlands, for example, may require Army Corps of Engineers authorization under Section 404 of the Clean Water Act. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Pecos sunflower;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and,

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on the proposed regulation for this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Charlie McDonald, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Helianthus paradoxus.	Pecos sunflower (=puzzle sunflower, paradox sunflower).	U.S.A. (NM, TX)	Asteraceae	T	x	NA	NA
*	*	*	*	*	*	*	

Dated: March 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8518 Filed 3–31–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE89

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Rumex Orthoneurus (Chiricahua Dock)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list *Rumex orthoneurus* (commonly known as Chiricahua or Blumer's dock) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). This plant is a rare Southwest endemic occurring within riparian and cienega (marshy wetland) habitats. The plant is known from the Chiricahua, Pinaleno, Huachuca, Sierra Ancha, and White mountains in Arizona. In New Mexico, the plant is known from the Mogollon and San Francisco mountains. The plant is also believed to extend into northern New Mexico in the Pecos Wilderness and to have been extirpated from the Lincoln National Forest. A site in Mexico in the Sierra de los Ajos has also been reported. Habitat loss and degradation due to livestock grazing, recreation, water diversions and

development, road construction and maintenance, and wildfire imperil the continued existence of this species. This proposal, if made final, would extend the Act's protection to this plant. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 30, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Rd., Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor at the above address or at telephone 602/640–2720 or facsimile 602/640–2730.

SUPPLEMENTARY INFORMATION:

Background

Rumex orthoneurus occurs within higher elevation riparian and wetland habitats in moist, loamy soils or shallowly inundated areas (cienegas) adjacent to springs and streams. While most of the sites are in open meadows or along streams with an open canopy, some sites are shaded. The surrounding habitats are generally mixed conifer (Coronado National Forest 1993). These adjacent plant communities primarily include Douglas fir (*Pseudotsuga menziesii*), ponderosa pine (*Pinus pondersosa*), big tooth maple (*Acer grandidentatum*), and white fir (*Abies concolor*) (Van Devender 1980). The dominant species associated with *R. orthoneurus* include sneeze weed (*Helenium hoopesii*), larkspur (*Delphinium andesicola*), monkeyflower (*Mimulus* sp.) and various sedges (*Carex* spp.) (Phillips *et al.* 1980).

Rumex orthoneurus requires a wetland habitat (perennial streams and springs and cienegas) that is rare in the desert southwest. The Arizona Game and Fish Department (1993) estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total Arizona land area, with present riparian areas being remnants of what once existed. Riparian and cienega habitats support many species of limited distribution in the Southwest, and that distribution can become increasingly restricted due to habitat degradation and loss (Hendrickson and Minckley 1984).

Habitat areas supporting *Rumex orthoneurus* are attractive to people and livestock and, as a result, have been subjected to impacts from recreation, water development and diversions, and concentrated livestock grazing (Phillips *et al.* 1980; Van Devender 1980; Coronado National Forest 1993; Tonto National Forest 1993; Sue Rutman, botanist, *in litt.* 1995; David Hodges, Southwest Center for Biological Diversity (SCBD), pers. comm. 1995; SCBD, petition, 1996).

Rumex orthoneurus is an herbaceous, robust perennial within the Polygonaceae (buckwheat family). Plants grow to 1 meter (m) (3.3 feet (ft)) in height with inflorescence stalks up to 2 m (6.6 ft) in height on more vigorous specimens. Large basal leaves are up to 50 centimeters (cm) (19.7 inches (in)) long, 18 cm (7.1 in) wide, and oblong to oblong-lanceolate in shape. Leaves located along the stem become shorter and more narrow as they develop upwards. Characteristics differentiating this plant from other members in its genus with which it could be confused include rhizomes (creeping underground stems) as opposed to taproots, lateral leaf veins almost perpendicular to the middle vein of the leaf, and a lack of swellings on the midribs of the fruiting capsules (Dawson 1979, Phillips et al. 1980, Coronado National Forest 1993).

Rumex orthoneurus was first described from a collection of Blumer's by Rechinger (1936). The collection information noted the following—Chiricahua Mountains, Barfoot Park in a rolling andesitic pineland that had been recently lumbered (Dawson 1979). This original type-locality population was extirpated, possibly as a result of uncontrolled water diversions in the 1980's (Coronado National Forest 1993). Plants at this site were introduced from a different population in the Chiricahua Mountains.

Originally, plants now known from the White, Mogollon, and San Francisco mountains were believed to be *Rumex occidentalis.* Several recent taxonomic studies did not indicate otherwise; however, the culmination of this work and the most recent research indicates that plants in the White, Mogollon, and San Francisco mountains are, in fact, *R. orthoneurus* (Mount and Logan 1993, Friar *et al.* 1994, Bellsey and Mount 1995). Additionally, recent research indicates that *R. orthoneurus* extends into northern New Mexico in the Pecos Wilderness and once occurred on the Lincoln National Forest (Robert Bellsey, University of Arizona, to Mima Falk, Coronado National Forest, pers. comm. 1997).

Rumex orthoneurus occurs at 10 sites in Arizona as natural (not introduced) populations in the Chiricahua, Pinaleno, Huachuca, and Sierra Ancha mountains. The extent of its occurrence in the White Mountains of Arizona is being assessed. In the Mogollon and San Francisco mountains on the Gila National Forest in the Gila Wilderness, it is reported from the Willow and Silver Creek drainages, tributaries of the Gila River, and from SA Creek (Bellsey and Mount 1995; Paul Boucher, Gila National Forest, pers. comm. 1997). It is believed to have been extirpated from three natural sites in Arizona.

Extensive, poorly documented introductions of *Rumex orthoneurus* occurred in the 1980s. Twenty-four introduced populations were established as a result of this effort. Many are now extirpated or believed unlikely to persist due to a number of factors, including management conflicts such as grazing and recreation impacts and poor site selection for the species' habitat needs (Coronado National Forest 1993, Tonto National Forest 1993). The Tonto National Forest (1993) identified and designated 15 transplant sites as Priority III populations expected to be extirpated within the next 50 years as a result of the factors noted above. The Tonto National Forest now considers six introduced populations to be extirpated (Stephen Gunzel, District Ranger, *in litt,* 1998).

The number of extant individuals in both natural and introduced populations of *Rumex orthoneurus* is not known precisely and is confounded by the species' form of asexual reproduction through creeping rhizomes. However, overall, numbers have been declining as a result of impacts from grazing, recreation, road construction and maintenance, and wildfire (unpublished Service data 1990, Coronado National Forest 1993, Tonto National Forest 1993). Comparisons over time of populations occurring on the Tonto National Forest have also been confounded by different counting and estimating methods (Charles Bazan, Tonto National Forest, *in litt.* 1997).

Specific site information for *Rumex orthoneurus* is limited primarily to the sites in the Pinaleno, Chiricahua, Huachuca, and Sierra Ancha mountains. This is the best scientific information available and is the basis for the Service's knowledge that the species is declining. An assessment of the other sites by the Forest Service is presently underway and this information will be valuable in determining further management needs for the species. For some documented impacts, such as

grazing, immediate management actions to remove threats cannot be implemented until the land management agencies have undertaken appropriate administrative procedures.

The remaining native *Rumex orthoneurus* population in the Chiricahua Mountains occurs at Rustler Park and extends along East Turkey Creek. The type locality at Barfoot Park was extirpated, and plants there now were introduced. A site at Upper Cave Creek, not relocated since the original report by S.B. Bingham in 1976, is presumed extirpated.

In the Pinaleno Mountains, *Rumex orthoneurus* is known from Mount Graham at Hospital Flat and Shannon Campground. Both of these natural populations occur in heavily used public recreation areas (Coronado National Forest 1993). The Coronado National Forest (1993) notes that the Hospital Flat site is subject to impacts from regular road maintenance activities.

Only one natural population of *Rumex orthoneurus* remains in the Huachuca Mountains; this site in Scheelite Canyon is under the administration of the Ft. Huachuca Army Post. While this population is subject to potential recreation impacts, the predominant threat is wildfire (Jim Hessil, Ft. Huachuca, pers. comm. 1997). In 1882, J.G. Lemmon collected *R. orthoneurus* from Ramsey Canyon in the Huachuca Mountains; however, this population was extirpated at an unknown date, possibly from activities associated with the Hamburg Mine (Van Devender 1980, unpublished Service data 1990). In 1990, *R. orthoneurus* was reported from Pat Scott Canyon in the Huachuca Mountains; however, that population has not been relocated (unpublished Service data 1990).

Rumex orthoneurus was believed to have been extirpated from Rose Creek in the Sierra Ancha Mountains; however, the Tonto National Forest (1993) reports finding a small number of plants near a developed spring at the campground located there. Previously, extensive road work and sedimentation had rendered most of the available habitat unsuitable. The other three natural populations in the Sierra Ancha Mountains are at Reynolds Creek, Workman Creek, and Cold Springs Canyon.

The success of introductions of populations of *Rumex orthoneurus* in the Chiricahua, Huachuca, and Sierra Ancha mountains has been variable. Some populations, such as those associated with the Cima Cabin in the Chiricahua Mountains, appear likely to persist over time. Other populations, in habitats which are marginal or unstable, are experiencing management impacts, or have been irretrievably altered by catastrophic wildfire, are already extirpated or believed unlikely to persist over time. An up-to-date assessment of the introduced populations on the Coronado and Tonto National Forests is needed to fully determine the number of extant introductions remaining. Plants occurring on the Gila National Forest are reportedly not subject to grazing impacts (Paul Boucher, Gila National Forest, pers. comm. 1997).

The Service seeks information regarding the status of *Rumex orthoneurus* populations elsewhere in New Mexico and Mexico. Information on the assumed extirpated population(s) on the Lincoln National Forest and on the status of the reported occurrence in the Sierra de los Ajos in Mexico is needed.

Previous Federal Action

Federal government actions on *Rumex orthoneurus* began as a result of section 12 of the original Endangered Species Act of 1973 which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the U.S. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Rumex orthoneurus* as an endangered species. The Service published a notice on July 1, 1975 (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2)(petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The July 1, 1975, notice included *Rumex orthoneurus.* On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Rumex orthoneurus* was included in the June 16, 1976, **Federal Register** document. The 1978 amendments to the Endangered Species Act required all proposals over 2 years old to be withdrawn, although a 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal for that portion of the June 16, 1976, proposal that had not been made final.

The Service published a Notice of Review for plants in the **Federal Register** on December 15, 1980 (45 FR 82480). This notice listed the status of *Rumex orthoneurus* as a Category 1 candidate. Category 1 candidates were taxa for which the Service had sufficient information to support preparation of listing proposals. The species remained a Category 1 candidate in subsequent Notices of Review published on November 28, 1983 (48 FR 53640), September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144).

Beginning with the combined animal and plant Notice of Review published on February 28, 1996 (61 FR 7596), the Service discontinued the designation of multiple categories of candidates, and only species for which the Service has sufficient information to warrant listing proposals are now recognized as candidates. *Rumex orthoneurus* was identified as a candidate in the February 28, 1996, notice and in the next combined animal and plant notice published on September 19, 1997 (62 FR 49398). Development of a proposed rule to list *R. orthoneurus* has been precluded by work on rules for species with a higher listing priority.

On May 7, 1996, the Service received a petition from representatives of the Southwest Forest Alliance and the Southwest Center for Biological Diversity requesting the Service to add *Rumex orthoneurus* to the List of Threatened and Endangered Wildlife and Plants. The petition also requested that critical habitat be designated concurrent with the listing. A civil action was filed in the District Court of Arizona on October 2, 1997, alleging the Service's failure to make a 90-day finding. Under section 4(b)(3) of the Act, the addition of a species to the candidate list and its maintenance on that list constitute both a positive 90-day petition finding and a warranted but precluded 12-month petition finding for that species. Because *R. orthoneurus* was already a candidate species when the May 7, 1996, petition was received, no additional petition findings were required, except for annual findings pursuant to section 4(b)(3)(C) of the Act. The need for further annual findings is obviated by this proposed rule.

Processing of this proposed rule conforms with the Service's Extension of Listing Priority Guidance for Fiscal Year 1997, published on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings following two related events—the lifting of the

moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1); second priority (Tier 2) to resolving the listing status of outstanding proposed listings; third priority (Tier 3) to resolving the conservation status of candidate species and processing 90-day or 12-month administrative findings on listing or reclassification petitions; and fourth priority (Tier 4) to proposed or final critical habitat designations and processing of reclassifications, which provide little or no additional conservation benefit to listed species. This proposed rule falls under Tier 3.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Rumex orthoneurus* Rechinger (Chiricahua dock) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Riparian and cienega habitat degradation and loss has been ongoing as a result of livestock grazing, recreation, water development and diversion, road construction and maintenance, logging, mining and associated activities, and wildfire. These activities have all negatively affected habitat supporting *Rumex orthoneurus* populations. Some populations have been extirpated as a result of the activities. Some of the natural populations in the Chiricahua and Huachuca mountains have been extirpated, possibly as a result of water development and diversion, grazing, and mining activities. The site at Rose Creek in the Sierra Ancha Mountains was believed to have been extirpated by road construction; a small number of plants were later found near a spring at the campground located there. One population in the Pinalenos Mountains is regularly impacted by frequent road maintenance.

These activities which alter habitat supporting *Rumex orthoneurus* continue to pose a threat. Much of this habitat modification is caused by soil compaction due to recreational and grazing activities with the result being a loss of suitable niches for seedling establishment, thus threatening the range of this plant in the future. Many populations occur in wetland areas subject to heavy public recreation. The Tonto National Forest (1993) noted evidence of soil compaction and unstable banks at the Workman Creek sites caused by recreational activities.

The Coronado National Forest (1993) discussed the possible extirpation of the type locality as a result of water diversions. Trampling impacts to the population at Hospital Flat and impacts caused by damming the creek where *Rumex orthoneurus* occurs have been observed (David Hodges, Southwest Center for Biological Diversity, pers. comm. 1995). The Coronado National Forest (1993) has stated that recreational impacts, such as trampling, are difficult to prevent in habitats used by campers, hikers, and birdwatchers. The Tonto National Forest receives the highest amount of recreational use of any National Forest in the U.S. (Eddie Alford, Tonto National Forest, pers. comm. 1997).

Grazing impacts *Rumex orthoneurus* at the system, population, and individual plant levels. *Rumex orthoneurus* occurs in wetland habitats attractive to livestock for forage, water, and shelter and is highly palatable to livestock. Populations being grazed often do not produce seeds. Continued grazing could eventually preclude the population's continued existence due to a lack of seed production, compacted soils discouraging seedling establishment, severe trampling of plants and their creeping underground rhizomes, and destabilization of streambanks resulting in habitat loss.

Prior to a change in permittees which eliminated trespass grazing, the *Rumex orthoneurus* population at Rustler Park in the Chiricahua Mountains was adversely affected by grazing, with plants appearing chlorotic, weak, and producing few inflorescences (Falk, Coronado National Forest, pers. comm. 1997). Activities, including grazing, which took place in the early 1900s in the vicinity of the historic Hamburg Mine are believed to be factors causing the extirpation of the population at Ramsey Canyon in the Huachuca Mountains (Van Devender 1980). Virtually all reported occurrences of *R. orthoneurus* on the Apache-Sitgreaves National Forests are being adversely affected by grazing activities (Apache-Sitgreaves National Forests, unpublished data, 1997).

Phillips *et al.* (1980) reported a proposed uranium mining and milling operation as a threat to the Workman Creek population of *Rumex orthoneurus* in the Sierra Ancha Mountains. A campsite was proposed to be developed, and the bowl area of Carr Mountain (the watershed for the site) was to be developed into a uranium mill. The Tonto National Forest Assessment for *R. orthoneurus* (1993) calls for the removal of mineral entry for this site; however, it is unknown if this has been implemented for Workman Creek. The Tonto National Forest is presently checking into the status of this mining operation and the potential for future mining.

Wildfire is also a threat to *Rumex orthoneurus.* The Dude Fire on the Tonto National Forest, which resulted in increased stream sedimentation and scouring, destroyed one introduced population and rendered the habitat no longer suitable, and significantly reduced available habitat at two other sites. The Bray Creek Fire on the Tonto National Forest similarly reduced suitable habitat along Bray Creek (Tonto National Forest 1993). The Bray Creek site is now considered extirpated. The Rattlesnake Fire on the Coronado National Forest resulted in a significant decline in the size and extent of one population; recovery has been slow and limited to areas containing some remaining suitable substrate. Much of the original creek is now filled with huge boulders as a result of the catastrophic soil loss following this fire.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No use of this species for these purposes is known.

C. Disease or Predation

The primary predation threat to *Rumex orthoneurus* is from livestock grazing due to its high palatability and occurrence in wetland habitats attractive to livestock. It has been speculated that grazing impacts at some sites have also been caused by deer (Phillips *et al.* 1980). Separation of impacts caused by native wildlife versus livestock, or the wildlife management changes in these wetland habitats has not been assessed. Grazing by trespass cattle and horses has been a problem in the recent past even in those sites protected by exclosures.

While the trespass situation in the Chiricahua Mountains appears to have been resolved within the last year after 8 years of problems, permitted grazing

occurs at *Rumex orthoneurus* sites in the White Mountains on the Apache-Sitgreaves National Forests and at sites on the Tonto National Forest. Grazing impacts on the site in the Pecos Wilderness are unknown. The Gila Wilderness has not had permitted grazing since 1952 (Paul Boucher, Gila National Forest, pers. comm. 1997). Grazing by cattle has not occurred since 1947 on the *R. orthoneurus* sites in the Pinaleno Mountains (Coronado National Forest 1993). Grazing impacts from horses used by outfitter guides and recreationists has not been fully evaluated for most sites.

D. The Inadequacy of Existing Regulatory Mechanisms

Many Federal and State laws and regulations can protect *Rumex orthoneurus* and its habitat. However, Federal and State agency discretion allowed under these laws still permits adverse effects on listed and rare species. Adding *R. orthoneurus* to the list of threatened species will help reduce adverse effects and will direct Federal agencies to work towards its recovery.

Rumex orthoneurus is not included in either of the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is unlikely it would require the trade protections of CITES.

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. Forest plans generally include a commitment to maintain viable populations of all native wildlife, fish and plant species within the Forest's jurisdiction (*e.g.* Coronado National Forest 1986). However, such general commitments do not preclude adverse effects to rare species by any National Forest.

The Coronado and Tonto National Forests developed assessments with management strategies for *Rumex orthoneurus* in 1993. To date, these plans have not successfully eliminated adverse effects from grazing and recreation. More successful implementation is now underway, although some sites still need recreation management to more fully eliminate threats. Assessment and management strategies have not been developed for the sites at the other National Forests or the Ft. Huachuca Army Post. All land management agencies with lands supporting this species must address this plant in their fire management planning as wildfire, with a resulting catastrophic loss of soil and habitat modification, poses a threat to many populations.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. The NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impact. A Federal action agency may choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

The wetland habitats supporting *Rumex orthoneurus* have a degree of protection under section 404 of the Clean Water Act and under Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). These laws and orders have not halted population decline, extirpation, or habitat losses for *R. orthoneurus.*

Under the Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, it is prohibited to import, export, sell, receive, acquire, purchase, or engage in interstate or foreign commerce in any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State. The Lacey Act can provide a degree of protection to *Rumex orthoneurus* to the extent that the species is protected by Arizona State law (described below) and to the extent the Lacey Act can be enforced.

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Rumex orthoneurus* as ''highly safeguarded.'' A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect this species from public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living ''highly safeguarded'' native plant from private, State, or Federal land without a permit. However, private landowners and Federal and State public agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Despite the protections of the Arizona Native Plant Law, legal and illegal damage and destruction of plants and habitat continue to occur.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Many of the populations of *Rumex orthoneurus* occur as small sites in isolated mountain ranges. The loss of any of these populations represents a significant curtailment of the species' range, and may have negative effects on the species' ability to sustain itself over time. As discussed previously, wildfire can pose a significant threat to this species. Because of overgrazing and fire suppression, wildfire can be catastrophic.

The generally low numbers of individuals in mostly scattered, isolated populations renders *Rumex orthoneurus* vulnerable to chance extirpations and potential extinction. Small isolated populations have an increased probability of extirpation (Wilcox and Murphy 1985). Once populations are extirpated, natural recolonization of these isolated habitats may not occur (Frankel and Soule 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Rumex orthoneurus* as threatened. This plant is threatened by habitat degradation and loss caused by livestock grazing, water diversions and development, recreation, wildfire, road construction and maintenance, and direct predation by livestock. The species is also subject to an increased risk of extinction due to the small number and sizes of populations. While not in immediate danger of extinction, *R. orthoneurus* is likely to become an endangered species in the foreseeable future if the present threats and declines continue.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for *Rumex orthoneurus* for the following reasons.

All known populations of *Rumex orthoneurus* occur on Federal lands. Some of these sites are small and discrete thus rendering them vulnerable to vandalism of habitat and plants. Publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a proposal of critical habitat, may make this plant vulnerable to incidents of vandalism. Because designation of critical habitat may increase the degree of threat to the species, such designation is not prudent.

In addition, critical habitat designation for *Rumex orthoneurus* is not prudent due to lack of benefit. In the U.S., the species occurs entirely on Federal lands; the U.S. Forest Service and Department of the Army are aware of the locations of *R. orthoneurus* populations on their lands and are either implementing conservation strategies or developing them at this time. Therefore, informing these Federal agencies of the locations of the species through designation of critical habitat is unnecessary.

Furthermore, because it is likely that an activity that would cause adverse modification of critical habitat would also cause jeopardy to *Rumex orthoneurus*, the designation of critical habitat would not likely provide greater protection for this species or its habitat than that provided by listing. Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Because, in the U.S., *R. orthoneurus* occurs entirely on Federal lands and because locations of populations of the species are well known to the managers of these Federal lands, no adverse modification of this habitat is likely to occur without consultation under section 7 of the Act. Because of the small size of the species' current range, any adverse modification of the species' critical habitat would also likely jeopardize the species' continued existence. Designation of critical habitat for *R. orthoneurus*, therefore, would provide no additional benefit to the species beyond that conferred by listing.

Protection of the habitat of *Rumex orthoneurus* will be addressed through the section 4 recovery process and the section 7 consultation process. For the reasons discussed above, the Service finds that the designation of critical habitat for *R. orthoneurus* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Rumex orthoneurus is known from the Coronado, Tonto, Apache-Sitgreaves, Gila, and Santa Fe National Forests and from the Ft. Huachuca Army Post managed by the Department of Defense.

Examples of Federal actions that may affect this plant include recreation management, road construction, livestock grazing, water diversions and developments, granting rights-of-way, and military activities. These and other Federal actions would require section 7 consultation if the agency determines that the proposed action may affect listed species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under

certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few permits for trade of *Rumex orthoneurus* would ever be sought or issued because the species is not in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.72 or contact the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203–3507 (phone 703/358–2104, facsimile 703/358–2281).

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if the species is listed. The intent of this policy is to increase public awareness of the effect of a species' listing on proposed and ongoing activities within the species' range. Collection of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Actions funded, authorized, or implemented by a Federal agency that could result in the removal and reduction to possession of the species on Federal lands would not be a violation of section 9 of the Act, provided they are conducted in accordance with any reasonable and prudent measures required by the Service under section 7 of the Act. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that would affect *Rumex orthoneurus* and result in a violation of section 9. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Arizona Ecological Services Field Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Angela Brooks, Arizona Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under Flowering Plants, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Rumex orthoneurus	Chiricahua dock	U.S.A. (AZ, NM), Mexico.	Polygonaceae	T		NA	NA
*	*	*	*	*	*	*	

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8517 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE82

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Phlox hirsuta (Yreka Phlox) From Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended for one perennial plant, *Phlox hirsuta* (Yreka phlox). *Phlox hirsuta* is known only from two locations on serpentine slopes in Siskiyou County, California. A third location, near Etna Mills, California, has been searched, but no plants or habitat have been found since 1930. Urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to small number of populations and small range of the species threaten *Phlox hirsuta*. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant species.

DATES: Comments from all interested parties must be received by June 1, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821-6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/979–2120; facsimile 916/979–2128).

SUPPLEMENTARY INFORMATION:

Background

Phlox hirsuta (Yreka phlox) is endemic to Siskiyou County, California where it grows on serpentine slopes in the vicinity of the City of Yreka (California Native Plant Society (CNPS) 1985). Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). Ultramafic rocks are found discontinuously throughout California, in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California to British Columbia. Soils produced from ultramafic rocks have characteristic physical and chemical properties, tending to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus. Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

In 1876, Edward Green collected the type specimen of *Phlox hirsuta* 8 kilometers (5 miles) southwest of Yreka, California (Wherry 1955). Elias Nelson described the species in 1899 (Abrams 1951, CNPS 1985). Willis Jepson (1943) reduced the species to varietal status, treating the taxon as *Phlox stansburyi* var. *hirsuta*. Edgar Wherry returned the taxon to full species status in his 1955 revision of the genus *Phlox*.

Phlox hirsuta is a perennial subshrub in the phlox family (Polemoniaceae). The species grows 5 to 15 centimeters (2 to 5.9 inches) high from a stout, woody base and is hairy throughout. Narrowly lanceolate to ovate leaves with glandular margins are crowded on the stem. The leaves are 1.5 to 3 centimeters (0.6 to 1.2 inches) long and 4 to 7 millimeters (0.2 to 0.3 inch) wide. Pink to purple flowers appear from April to June. The corollas of the flowers are 12 to 15 millimeters (0.5 to 0.6 inch) long and are smooth-margined at the apex (CNPS 1977, 1985). The 5 to 8 millimeters (0.2 to 0.3 inch) style is contained within the corolla tube (CNPS 1977, 1985; Hickman 1993). Several other phlox species may occur within the range of *P. hirsuta*. Of these, *P. speciosa* (showy phlox) has notched petal lobes and grows 15 to 40 centimeters (5.9 to 15.8 inches), considerably taller than *P. hirsuta*. *Phlox adsurgens* (northern phlox) is also larger than *P. hirsuta* (15 to 30 centimeters (5.9 to 11.8 inches)). In addition, *P. adsurgens* blooms later (from June to August) than *P. hirsuta* and is glabrous rather than hairy. Prostrate (lying flat on the ground) to decumbent (mostly lying on the ground but with tips curving up) stems and herbage lacking glands separate *P. diffusa* (spreading phlox) from *P. hirsuta* (CNPS 1977, 1985). Although found at the same latitudes, *P. stansburyi* (Stansbury's phlox) occurs 112 kilometers (70 miles) farther to the east in Lassen and Modoc Counties (CNPS 1977).

Phlox hirsuta is found on serpentine soils at elevations from 880 to 1,340 meters (2,800 to 4,400 feet) in association with Jeffrey pine (*Pinus jeffreyi*), incense cedar (*Calocedrus decurrens*), and junipers (*Juniperus* sp.)(CNPS 1985; California Department of Fish and Game (CDFG) 1986; California Natural Diversity Data Base (CNDDB) 1997). The species is known from only two locations in the vicinity of Yreka, California. One occurrence is an open ridge in a juniper woodland within the City limits of Yreka (CNPS 1977, 1985; CNDDB 1997). Estimates of the area occupied by the occurrence range from approximately 15 hectares (37 acres) (Grant and Virginia Fletcher, *in litt.* 1995) to approximately 36 hectares (90 acres) (Nancy Kang, U.S. Fish and Wildlife Service, *in litt.* 1995a). Other extreme serpentine sites searched in the area do not support additional populations of *Phlox hirsuta* (Adams 1987). The second occurrence is about 8 to 10 kilometers (5 to 6 miles) southwest of Yreka along California State Highway 3 in an open Jeffrey pine forest (CNPS 1977, 1985; CNDDB 1997) and includes approximately 65 hectares (160 acres) of occupied habitat (USFWS maps on file). A third location, where the species was last reported in 1930, is in the vicinity of Mill Creek near Etna Mills. The area was searched, but no plants or appropriate habitat were identified (CNPS 1985), and the location may be erroneous (CDFG 1986, Adams 1987). Surveys have been conducted on 80 percent of the potential habitat (defined as the presence of suitable soils) on Klamath National Forest (Ken Fuller and Diane Elam, U.S. Fish and Wildlife Service, *in litt.* 1997) and Bureau of Land Management (Joe Molter, Bureau of Land Management, pers. comm. 1997) lands within the Redding Resource Area; no new populations of *P. hirsuta* have been discovered.

Land ownership of the two occurrences is a mixture of private land owners, the City of Yreka, and the U.S. Forest Service (CNDDB 1997). The City of Yreka occurrence is the more vigorous and dense of the two occurrences (Linda Barker, Klamath

National Forest, *in litt.* 1985; Adams 1987; CNDDB 1997). Part of the *P. hirsuta* occurrence in the City of Yreka is owned by the City of Yreka; the remainder is privately owned (Larry Bacon, City of Yreka, pers. comm. 1997). The Highway 3 occurrence is partially on U.S. Forest Service lands on the Klamath National Forest, partially within a State highway right-of-way, and partially privately owned (CDFG 1986, CNDDB 1997). Approximately 50 percent of occupied habitat at this occurrence and 25 percent of the occupied habitat of the species is on land administered by the Klamath National Forest (based on maps in USFWS files). *Phlox hirsuta* is threatened by urbanization at the City of Yreka location and by inadequate regulatory mechanisms throughout its range. The small number of populations and small range of the species also make it vulnerable to decline or extirpation due to random events throughout its range.

Previous Federal Action

Federal government actions on *Phlox hirsuta* began as a result of section 12 of the original Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Phlox hirsuta* as a threatened species. The Fish and Wildlife Service published a notice on July 1, 1975 (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The July 1, 1975 notice included the above taxon. On June 16, 1976, the Fish and Wildlife Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Fish and Wildlife Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Phlox hirsuta* was included in the June 16, 1976, **Federal Register** document.

The Fish and Wildlife Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Phlox hirsuta* as a category 1 candidate. Category 1 candidates were those taxa for which the Fish and Wildlife Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the November 28, 1983 supplement to the Notice of Review (48 FR 53640) as well as in the subsequent revision on September 27, 1985 (50 FR 39526), *Phlox hirsuta* was included as a category 2 candidate. Category 2 taxa were those for which data in the Service's possession indicate listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. In the February 21, 1990 (55 FR 6184) notice of review, *Phlox hirsuta* was returned to category 1 candidate status. The species was also included as a category 1 candidate in the September 30, 1993 (50 FR 51143) Notice of Review. *Phlox hirsuta* was listed as a candidate in the Notice of Review published on February 28, 1996 (61 FR 7596). Candidate species are those for which the Fish and Wildlife Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as threatened or endangered species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Phlox hirsuta*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Fish and Wildlife Service found that the petitioned listing of the species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1983 through 1997. Publication of this proposal constitutes the final finding for the petitioned action. *Phlox hirsuta* has a listing priority number of 2. Processing of this rule is a Tier 3 activity under the current listing priority guidance (61 FR 64475, 62 FR 55268).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Phlox hirsuta* E. Nelson (Yreka Phlox) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The *Phlox hirsuta* occurrence within the City of Yreka represents at least 18 percent, and possibly 45 percent, of occupied habitat for the species (calculated from USFWS records). The occurrence is threatened by development. The majority of the site is subdivided (CNPS 1985, CDFG 1986). Eight of the subdivision lots support *P. hirsuta*; seven have *P. hirsuta* on at least 75 percent of the lot (N. Kang, *in litt.* 1995a). Six of the eight lots are privately owned; two are owned by the City of Yreka. Another smaller piece of land in the same area supports *P. hirsuta* and is also owned by the city (N. Kang, *in litt.* 1995a; L. Bacon, pers. comm. 1997). The *P. hirsuta* occurrence within the City of Yreka has been disturbed by road construction associated with the subdivision (CNPS 1985, CDFG 1986). An unmaintained roadway bisects the occurrence and likely represents permanent destruction of habitat at the site (N. Kang, *in litt.* 1995a). Additional disturbance resulted from grading for a house pad on one lot in 1994; *Phlox hirsuta* has not reinvaded the disturbed area (N. Kang, *in litt.* 1995a, 1995b). For most of the lots, ''the most favorable and likely for building is in *P. hirsuta* habitat'' (N. Kang, *in litt.* 1995a, 1995b). Because *P. hirsuta* plants are fairly evenly distributed across the lots, strategic placement of development in occupied habitat would not necessarily minimize impacts to the species. Additionally, over the long-term private landowners may not maintain their properties in a manner consistent with protection of the plants and their habitat (N. Kang, *in litt.* 1995a). Formerly, some lots at the site were registered with The Nature Conservancy landowner contact program, but that program no longer exists (Lynn Lozier, The Nature Conservancy, pers. comm. 1997). While the Fish and Wildlife Service is unaware of specific development plans on any lots at this time, a ''for sale'' sign was posted on the private property in May 1997 (K. Fuller and D. Elam, *in litt.* 1997).

The only other occurrence of *P. hirsuta*, the one along California State

Highway 3, has been disturbed in the past by logging and road construction. Although selective logging (CNPS 1985, Adams 1987) resulted in roads and bulldozer trails through the site (Adams 1987), logging is not currently a threat to *P. hirsuta* (K. Fuller and D. Elam, *in litt*. 1997), and the Forest Service has no activities planned in this area that may pose a threat. Thirty years ago, the realignment of Highway 3 impacted part of this occurrence (Sharon Stacey, California Department of Transportation (Caltrans), pers. comm. 1996). The area has since been designated by Caltrans as an Environmentally Sensitive Area (S. Stacey, pers. comm. 1998), which provides limited protection in that it requires acknowledgment of a sensitive species occurrence in project planning. Although road maintenance crews are to be made aware that no new ground is to be disturbed along this stretch of highway (Bob Sheffield, Caltrans, pers. comm. 1997), the portion of the occurrence within the Caltrans right-of-way could be disturbed by road maintenance (Charlotte Bowen, Caltrans, *in litt*. 1991). The area within the right-of-way consists of 5 small subpopulations with approximately 100 plants, occupying less than 0.8 hectare (2 acres) along 4 kilometers (2.5 miles) of the California State Highway 3. While encroaching development has been considered to be a potential threat to the plants occurring on private lands at the Highway 3 site (CNPS 1985; CDFG 1986), the threat from development at this site does not appear imminent.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a threat to *Phlox hirsuta* although it has been suggested that the species may be of interest to rock garden enthusiasts (CNPS 1977).

C. Disease or Predation

There is no known threat to *Phlox hirsuta* from disease. Parts of the Highway 3 site have been grazed in the past, perhaps by trespass cattle (CNPS 1985, Adams 1987). However, grazing is probably not a threat to *P. hirsuta* at this time (K. Fuller and D. Elam, *in litt.* 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of California Fish and Game Commission has listed *Phlox hirsuta* as an endangered species under the California Endangered Species Act (CESA) (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Although the ''take'' of State-listed plants has long been prohibited under the California Native Plant Protection Act (CNPPA), Chapter 10 § 1908 and California Endangered Species Act, Chapter 1.5 § 2080), in the past these statutes have not provided adequate protection for such plants from the impacts of habitat modification or land use change. For example, under the CNPPA, after the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, the statute requires only that the land owner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (California Native Plant Protection Act, Chapter 10 § 1913). Under recent amendments to CESA, a permit under Section 2081(b) of the California Fish and Game Code is required to ''take'' State listed species incidental to otherwise lawful activities. The amendments require that impacts to the species be fully mitigated. However, these requirements have not been tested and several years will be required to evaluate their effectiveness. State lead agencies, such as Caltrans, are also required to consult with the California Department of Fish and Game to ensure that actions authorized, funded, or carried out by these agencies will not jeopardize the continued existence of State-listed endangered or threatened species (California Endangered Species Act, Chapter 1.5 § 2090). However, according to the California Environmental Quality Act (CEQA), which requires full disclosure of potential environmental impacts of proposed projects, protection of State-listed species is dependent upon the discretion of the lead agency involved, and projects may be approved that cause significant environmental damage, such as loss of sites supporting State-listed species. Mitigation requirements are optional, and are at the discretion of the lead agency. When mitigation plans are required, they often involve transplantation of the plant species to an existing or artificially created habitat, followed by destruction of the original site. Therefore, if the mitigation effort fails, the resource has already been lost. Further, CEQA does not guarantee that such conservation efforts will be implemented. In addition, the CEQA guidelines are being proposed for revisions that, if made final, may weaken protections for threatened, endangered, and other sensitive species (U.S. Department of Interior, *in litt.* 1997). Final CEQA guidelines are forthcoming.

In order to proceed with development of private and City of Yreka lands where *Phlox hirsuta* grows, the City of Yreka would require California Environmental Quality Act (CEQA) review (L. Bacon, pers. comm. 1997). The California Environmental Quality Act requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the California Environmental Quality Act Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects that cause significant environmental damage, such as destruction of endangered species, may be approved. Protection of listed species through the California Environmental Quality Act is, therefore, dependent upon the discretion of the agency involved.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Phlox hirsuta is known from only two small occurrences, which occupy fewer than 121 hectares (300 acres) in a restricted habitat type (serpentine soils) over a very small range (approximately 65 square kilometers (25 square miles)). The combination of only two populations, small range, and restricted habitat makes the species highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with the species discussed here. Once the number of populations or the plant population size is reduced, the remnant populations, or portions of populations, have a higher probability of extinction from random events (Primack 1993).

The Fish and Wildlife Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Phlox hirsuta* in determining to propose this rule. Urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to the small number of populations and small range of the species threaten *P. hirsuta.* The two occurrences of *P. hirsuta* total fewer than 121 hectares (300 acres) of occupied habitat in the vicinity of the City of Yreka, Siskiyou County, California. The site within the City of Yreka is already subdivided, has been disturbed by activities associated with urbanization in the past, is situated in an area that is suitable for development, and is unprotected from this threat. In addition, both occurrences are at risk due to inadequate State regulatory mechanisms and due to potential extirpation of all or part of the occurrences due to random events. Therefore, the preferred action is to list *P. hirsuta* as endangered.

Alternatives to listing were considered before publication of this proposed rule. The other alternatives were not preferred because they would not provide adequate protection and would not be consistent with the Act. Listing *Phlox hirsuta* as endangered would provide Federal protection for the species and result in additional protection as outlined under the Available Conservation Measures section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection, and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' as it is defined in section 3(3) of the Act means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. Fish and Wildlife Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. Federal involvement is most likely in two situations—(1) where the species occurs on Federal lands and (2) when a Federal agency is involved in authorizing or funding actions on non-Federal lands. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards, and thus similar thresholds for violation of section 7 of the Act.

The Fish and Wildlife Service finds that designation of critical habitat is not prudent for *Phlox hirsuta* as it would provide no additional benefit to the species beyond listing. There are only two known sites of *P. hirsuta.* No other sites containing *P. hirsuta* have been identified, and no historic locations are known (CNDDB 1997). One site sits on both City of Yreka and private lands, and the other site is partially on private land, partially on Caltrans right-of-way, and partially on Klamath National Forest land. Designation of critical habitat may affect non-Federal lands only where a Federal nexus exists, such as 404 permitting under the Clean Water Act. As it is an upland species facing the threat of private development, the designation of critical habitat on private or State lands provides no additional benefit for *P. hirsuta* over that provided as a result of listing since there are no Federal nexus actions taking place. Furthermore, due to the limited distribution of *P. hirsuta,* any action that would adversely modify critical habitat would also jeopardize the species. Critical habitat designation for known populations on private lands and the City of Yreka lands would confer no benefit beyond that of listing as there is no Federal nexus, and potentially could present significant threats to the species' continued existence. The publication of maps and precise locations of plant occurrences could contribute to the further decline of the species by facilitating trespassing and hindering recovery efforts.

The other site is on a mixture of a Caltrans right-of-way, private lands and Klamath National Forest land. Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat or jeopardizing the continued existence of a listed species. Designation of critical habitat would provide no benefit where the *P. hirsuta* occurs on Federal land or Caltrans right-of-way because any adverse modification of the occupied habitat would likely jeopardize the continued existence of the species. Additionally, modification of habitat is unlikely to occur without consultation under section 7 of the Act because the presence of *P. hirsuta,* and its specific locations, are known to the managers of the Klamath National Forest (K. Fuller and D. Elam, *in litt.* 1997) and to Caltrans personnel (S. Stacey, pers. comm. 1996, 1998). Protection of the habitat of *Phlox hirsuta* will be addressed through the section 4 recovery process and the section 7 consultation process. For the reasons discussed above, the Fish and Wildlife Service finds that the designation of critical habitat for *P. hirsuta* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Fish and Wildlife Service on any action that is likely to jeopardize the continued existence of a proposed species or result

in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Fish and Wildlife Service.

Listing *Phlox hirsuta* would provide for development of a recovery plan for the species. The plan would bring together both State and Federal efforts for conservation of the species. The plan would establish a framework for agencies, local government, and private interests to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan also would describe management actions necessary to achieve conservation and survival of *P. hirsuta.* Additionally, pursuant to section 6 of the Act, the Fish and Wildlife Service would be able to grant funds to an affected State for management actions promoting the protection and recovery of the species.

Federal activities potentially affecting *Phlox hirsuta* include issuance of special use permits and rights-of-ways. Approximately one-half of the Highway 3 occurrence of *Phlox hirsuta* occurs on lands managed by the U.S. Forest Service. The U.S. Forest Service would be required to consult with the U.S. Fish and Wildlife Service if any activities authorized, funded, or carried out by the U.S. Forest Service may affect *P. hirsuta,* for example, road maintenance and right-of-way authorizations for projects that include adjacent or intermixed private land. The Forest Service has been contacted regarding the presence of *P. hirsuta,* and has no planned activities that would require initiating consultation procedures.

Other Federal agencies that may become involved if this rule is finalized include the Federal Highways Administration through funding provided to Caltrans. In addition, Federal involvement may occur when the Fish and Wildlife Service issues permits for habitat conservation plans (HCPs) prepared by non-Federal parties.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any of the plants, transport or ship them in interstate or foreign commerce in the course of a commercial activity; sell or offer them for sale in interstate or foreign commerce; or remove and reduce any of the plants to possession from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of endangered plants from areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Fish and Wildlife Service and State conservation agencies.

It is the policy of the Fish and Wildlife Service, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. One of the two occurrences of *Phlox hirsuta* is on U.S. Forest Service lands. Section 9 of the Act prohibits removal and malicious damage or destruction of endangered plants on Federal lands. However, actions funded, authorized or implemented by a Federal agency that could result in the removal or destruction of such species on Federal lands, would not be in violation of the Act, provided the actions would not likely result in jeopardy to the species. The removal and reduction to possession of listed species on Federal lands for research activities may be authorized by the Fish and Wildlife Service under section 10(a)(1)(A) of the Act (see below). Activities that do not involve any Federal agency funding or authorization on private lands do not violate section 9 of the Act, unless such activities are carried out in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law. Moderate activities such as construction of fences, livestock-water ponds, and livestock grazing would not constitute a violation of section 9. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181; telephone 503/231–2063 or FAX 503/231–6243. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget ordanance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22.

Public Comments Solicited

The Fish and Wildlife Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Fish and Wildlife Service will follow its current peer review policy (59 FR 34270) in the processing of this rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Phlox hirsuta*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Fish and Wildlife Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U. S. Fish and Wildlife Service, 3310 El

Camino Avenue, Suite 130, Sacramento, CA 95821–6340.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Diane Elam, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Fish and Wildlife Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend Section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Phlox hirsuta	Yreka phlox	U.S.A. (CA)	Polemoniaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8516 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 62

Wednesday, April 1, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–007–1]

Animal Welfare; Veterinary Care for Elephants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: Regulations promulgated under the Animal Welfare Act require animal dealers and exhibitors to establish and use appropriate methods to prevent, control, diagnose, and treat diseases in animals covered by the Act. This document gives notice that, for elephant dealers and exhibitors, appropriate methods must include periodic testing of their elephants for tuberculosis and, if necessary, treating them for tuberculosis and/or quarantining them. In addition, to protect the health of elephants that have not been exposed to the disease, all attendants, handlers, and trainees who have direct contact with elephants must be tested for tuberculosis on at least an annual basis. We are taking this action because several cases of tuberculosis, a potentially fatal disease affecting humans and many species of animals, have been diagnosed in the United States among elephants, which are regulated under the Animal Welfare Act.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

Subpart D of 9 CFR part 2 consists of § 2.40, ''Attending veterinarian and adequate veterinary care (dealers and exhibitors).'' Paragraph (b) of § 2.40 requires each dealer and exhibitor to establish and maintain programs of adequate veterinary care, and paragraph (b)(2) requires, specifically, ''the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries * * *'' of regulated animals.

We have determined that, to comply with § 2.40, dealers and exhibitors of elephants must take specific actions to prevent, control, diagnose, and treat tuberculosis, a contagious disease affecting many species of animals, including elephants, and humans. If left untreated or if treated improperly, tuberculosis can cause death. Recently, several elephants owned by AWA-licensed exhibitors have tested culture positive for tuberculosis, and a few elephants have died from this disease. Elephants with tuberculosis can transmit the disease to other elephants, other animals, and, potentially, to humans.

In response to concerns about the incidence of tuberculosis among several species of animals, the Tuberculosis Committee of the U.S. Animal Health Association recently formed the National Tuberculosis Working Group for Zoo and Wildlife Species. This working group, with broad participation from several organizations, including the American Association of Zoo Veterinarians and the American Zoo and Aquarium Association, developed guidelines, completed in November 1997, for the control of tuberculosis in elephants. The guidelines specify criteria for the testing, surveillance, and treatment of elephants for tuberculosis and establish travel restrictions and quarantines for elephants that fall into certain categories. Because the possibility exists that humans could transmit the disease to elephants, the guidelines also require that all persons such as attendants, handlers, and trainees that have direct contact with elephants be tested for tuberculosis on at least an annual basis.

We are giving notice that dealers and exhibitors of elephants must either follow the guidelines developed by the National Tuberculosis Working Group for Zoo and Wildlife Species or provide a comparable testing and monitoring protocol that meets our goals of ensuring the welfare of elephants and minimizing the potential spread of tuberculosis. Dealers and exhibitors who wish to use a protocol other than the recommended guidelines must have the protocol reviewed and approved by APHIS prior to implementation. To request a copy of the guidelines or to request review of an alternate protocol, contact one of our Animal Care regional offices:

Eastern Regional Office, Annapolis, MD, (410) 571–8692;

Central Regional Office, Ft. Worth, TX, (817) 885–6923;

Western Regional Office, Sacramento, CA, (916) 857–6205.

In addition, a copy of the guidelines is available for review in the APHIS reading room at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to gain access to the reading room are requested to call ahead on (202) 690–2817 to facilitate entry. The guidelines are also available on the Internet at www.aphis.usda.gov/ac.

Notice of this policy change was given in January 1998 to all AWA-licensed dealers and exhibitors of elephants. This policy change is in effect, and dealers and exhibitors are expected to be in compliance. Dealers and exhibitors must maintain documentation that elephants are being cared for in accordance with the recommended guidelines or an APHIS-approved protocol, and APHIS inspectors will review such documentation during routine inspections. The information collection requirements associated with programs of adequate veterinary care have been approved by the Office of Management and Budget under control number 0579–0036.

Done in Washington, DC, this 24th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–8536 Filed 3–31–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Cairo (IL), Louisiana, and North Carolina Areas and Request for Comments on the Cairo, Louisiana, and North Carolina Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Cairo Grain Inspection Agency, Inc. (Cairo), will end October 31, 1998, according to the Act. The designations of the Louisiana Department of Agriculture (Louisiana), and the North Carolina Department of Agriculture (North Carolina) will end September 30, 1998, according to the Act. GIPSA is asking persons interested in providing official services in the Cairo, Louisiana, and North Carolina areas to submit an application for designation. GIPSA is also asking for comments on the services provided by Cairo, Louisiana, and North Carolina.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before April 30, 1998. Comments are due by June 30, 1998.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION:

This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Cairo, main office located in Cairo, Illinois, to provide official inspection services under the Act on November 1, 1995. GIPSA designated Louisiana, main office located in Pineville, Louisiana, and North Carolina, main office located in Raleigh, North Carolina, to provide official inspection services under the Act on October 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Cairo ends on October 31, 1998, according to the Act. The designations of Louisiana and North Carolina end on September 30, 1998, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois, Kentucky, and Tennessee, is assigned to Cairo.

Randolph County (southwest of State Route 150 from the Mississippi River north to State Route 3); Jackson County (southwest of State Route 3 southeast to State Route 149; State Route 149 east to State Route 13; State Route 13 southeast to U.S. Route 51; U.S. Route 51 south to Union County); and Alexander, Johnson, Hardin, Massac, Pope, Pulaski, and Union Counties, Illinois.

Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, and Trigg Counties, Kentucky.

Benton, Dickson, Henry, Houston, Humphreys, Lake, Montgomery, Obion, Stewart, and Weakley Counties, Tennessee.

Cairo's assigned geographic area does not include the following grain elevator inside Cairo's area which has been and will continue to be serviced by the following official agency: Memphis Grain and Hay Association: Continental Grain Co., Tiptonville, Lake County, Tennessee.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Louisiana, except those export port locations within the State which are serviced by GIPSA, is assigned to Louisiana.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of North Carolina, except those export port locations within the State which are serviced by GIPSA, is assigned to North Carolina.

Interested persons, including Cairo, Louisiana, and North Carolina are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the Cairo area is for the period beginning November 1, 1998, and ending October 31, 2001. Designations in the Louisiana and North Carolina areas is for the period beginning October 1, 1998, and ending September 30, 2001. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Cairo, Louisiana, and North Carolina official agencies. Commentors are encouraged to submit pertinent data concerning the Cairo, Louisiana, and North Carolina official agencies including information concerning the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: March 23, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–8442 Filed 3–31–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Detroit (MI), Keokuk (IA), and Michigan (MI) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Detroit Grain Inspection Service, Inc. (Detroit), Keokuk Grain Inspection Service (Keokuk), and Michigan Grain Inspection Services, Inc. (Michigan), to provide official services

under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: May 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 3, 1997, **Federal Register** (62 FR 59341), GIPSA asked persons interested in providing official services in the geographic areas assigned to Detroit, Keokuk, and Michigan to submit an application for designation. Applications were due by December 2, 1997. Detroit, Keokuk, and Michigan, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Detroit, Keokuk, and Michigan were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Detroit, Keokuk, and Michigan are able to provide official services in the geographic areas for which they applied. Effective May 1, 1998, and ending April 30, 2001, Detroit, Keokuk, and Michigan are designated to provide official services in the geographic area specified in the November 3, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Detroit at 810–395–2105, Keokuk at 319–524–6482, and Michigan at 616–781–2711.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: March 18, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–8441 Filed 3–31–98; 8:45 am]

BILLING CODE 3410–EN–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 7, 1998; 9:30 A.M.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey at (202) 401–3736.

Dated: March 30, 1998.

David W. Burke,

Chairman.

[FR Doc. 98–8690 Filed 3–30–98; 2:47 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Suburban Guns (PTY) Ltd.

Order Denying Permission To Apply for or Use Export Licenses

On July 25, 1997, Suburban Guns (Pty) Ltd. (Suburban Guns) was convicted in the United States District Court for the Southern District of New York of one count of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1997)) (the Act),[1] and one count of violating the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. 1701–1706 (1991 & Supp. 1997)) (IEEPA). Specifically, Suburban Guns was convicted of knowingly and willfully causing to be exported to South Africa numerous firearms designated on the Commerce Control List without obtaining the required validated export licenses from the Department of Commerce.

Section 11(h) of the Act provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Act or the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Section 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the Act or the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Suburban Guns's conviction for violating the Act and the IEEPA and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Suburban Guns permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of its conviction. The 10-year period ends on July 25, 2007. I have also decided to revoke all licenses issued pursuant to the Act in which Suburban guns had an interest at the time of its conviction.

Accordingly, it is hereby

Ordered

I. Until July 25, 2007, Suburban Guns (Pty) Ltd., 119 Main Road, Plumstead 7800, Cape Town, South Africa, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Export Administration Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

(hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, cooperation, or business organization related to Suburban Guns by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-product direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 25, 2007.

VI. A copy of this Order shall be delivered to Suburban Guns. This Order shall be published in the **Federal Register**.

Dated: March 23, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–8521 Filed 3–31–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–826]

Notice of Amendment to Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia at 202/482–2243, or James C. Doyle at 202/482–0159, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR part 351 (62 FR 27296 (May 19, 1997)) do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Scope of the Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as ''Tire Cord Wire Rod.''
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as ''Valve Spring Quality Wire Rod.''
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use

of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as ''Semifinished Class III Pipe Wrapping Wire.''

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrapping Wire

As stated in the *Preliminary Determination*, North American Wire Products Corporation (''NAW''), an importer of the subject merchandise from Germany, requested that the Department exclude SWR used to manufacture Class III pipe wrapping wire from the scope of the antidumping and countervailing duty investigations of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela. Because petitioners did not agree to this scope exclusion, we did not exclude this merchandise in the preliminary determination. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997 and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded SWR for manufacturing Class III pipe wrapping wire from the scope of this investigation. *See* Memorandum to Richard W. Moreland dated January 12, 1998. Accordingly, on February 3, 1998, we instructed the U.S. Customs Service to terminate suspension of liquidation on all entries of Class III pipe wrapping wire from Canada.

Amendment of Final Determination

On February 24, 1998, the Department of Commerce (the Department) published the *Notice of Final Determination of Sales at Less than Fair Value: Steel Wire Rod From Canada* (63 FR 9182) (''*Final Determination*''). This notice covered Sidbec-Dosco (Ispat) Inc. (now Ispat-Sidbec), Stelco, Inc. (''Stelco''), and Ivaco, Inc. (''Ivaco''). The period of investigation (''POI'') for all respondents was January 1, 1996 through December 31, 1996.

On February 20, 1998, respondent Ivaco filed timely allegations of ministerial errors with regard to the *Final Determination*. On February 27, 1998, counsel for petitioners in this investigation (Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co.) filed timely allegations of ministerial errors and replies to Ivaco's comments. On March 16, 1998, Ivaco filed timely replies to petitioners' comments. We have reviewed the submissions of both petitioners and respondents, and we are issuing an amended final determination based on the corrections of ministerial errors as detailed below.

First, Ivaco states that the Department made a calculation error in the code which defines home market freight expense for Ivaco Rolling Mill's (IRM) direct sales to unaffiliated customers and to a particular affiliated customer. Ivaco alleges this error resulted in the Department not calculating the freight expense incurred in transporting the subject merchandise to these customers in the home market.

Petitioners agree with Ivaco that the Department made a calculation error in the code which defines home market freight expense for IRM's direct sales to unaffiliated customers. However, petitioners disagree that the Department erred in calculating freight expenses for sales to affiliated customers.

The Department agrees with both parties that a ministerial error was made when calculating home market freight expense for IRM's direct sales to unaffiliated customers, and has corrected the program accordingly. However, the Department has not erred in calculating freight expenses for IRM's direct sales to affiliated customers, therefore, no changes were made to the program.

Second, Ivaco maintains that due to a programming error the margin program fails to apply the level of trade (LOT) adjustment for Ivaco's sales. According to Ivaco, the error occurs because the Department relies on the CON2 data set, and that the variable in the home market data set used to identify LOT is not recognized by the program code. Consequently, in these instances, no level of trade adjustment is applied.

Petitioners maintain that LOT adjustment is not warranted, but agree that the margin program fails to apply it. Petitioners propose new code lines to the program to correct the error.

The Department agrees with both parties that the margin program fails to apply the LOT adjustment and accordingly has corrected it by adding the appropriate code lines to the program.

Third, Ivaco states that the Department improperly applied the yield adjustment factor to all Ivaco sales, instead of only to Ivaco sales of processed rod, as the Department intended.

Petitioners state that using facts available in the record, and given the total inability of Ivaco to provide the necessary information, the Department, with its limited resources and time, was more than justified in employing this calculation.

The Department agrees with Ivaco that it has erred in applying the yield adjustment factor to all Ivaco sales. The Department intended to apply yield adjustment factor to only Ivaco sales of processed rod. *See* Cost Disclosure Memorandum at 2.

Fourth, Petitioners claim that the Department erred when calculating the constructed export price, and that the variable INDEXUS should be replaced by INDEXPU, which is inclusive of inventory carrying costs and indirect selling expenses, as expressed in the Department's calculation memorandum.

Ivaco agrees that the Department inadvertently erred when calculating the constructed export price but disagrees that the adjustment should also include domestic indirect selling expenses.

The Department agrees with Ivaco that when calculating the constructed export price, the Department adjusts for expenses associated with commercial activities in the United States in accordance with section 772(d)(1). We have, therefore, replaced the variable INDEXUS with the variable INDEXPU exclusive of domestic indirect selling expenses.

Finally, Ivaco claims that the Constructed Value (CV) calculation uses one weighted-average selling expense and one weighted-average profit figure for both of Ivaco's LOTs, rather than calculating separate CVs for each LOT by using weighted average values at each LOT, as the Department intended.

Petitioners claim that the Department has already rejected Ivaco's claim that CV should be calculated by LOT; therefore, this is not a ministerial error and the language proposed by Ivaco is methodological in nature.

Ivaco raised this issue in its comments on the preliminary determination, and the Department disagreed that the program for the CV calculation should be changed as Ivaco suggested. We therefore, agree with petitioners that it is inappropriate to

correct the CV program as a ministerial error under 735(e) of the Act.

Amended Final Determination

The revised weighted average dumping margins are :

Manufacturer/ exporter	Time period	Margin (per-cent)
Ivaco Inc.	1/1/96–12/31/96	6.95

This determination is published pursuant to section 735(d) of the Act, 19 U.S.C. 1673d(d) and 19 CFR 353.28(c).

Dated: March 25, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–8550 Filed 3–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), the Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A–583–815). This review covered one manufacturer/exporter of the subject merchandise to the United States during the period December 1, 1996 through November 30, 1997.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (62 FR 27296, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1996, the Department published its notice of ''Opportunity to Request Administrative Review'' for the period December 1, 1996 through November 30, 1997 (62 FR 64353). In accordance with 19 CFR 351.213(b) (1997), respondent Ta Chen requested that we conduct a review of Ta Chen's sales. On January 26, 1998, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period December 1, 1996 through November 30, 1997 (63 FR 3702).

By letter dated February 23, 1998, Ta Chen withdrew its request for administrative review. Section 19 CFR 351.213(d)(1) of the Department's regulations provides for the rescission of antidumping duty administrative reviews if a party that requested the review withdraws that request within 90 days of the date of publication of notice of initiation of review. See 19 CFR 353.213(d)(1) (62 FR 27295, 27393, May 19, 1997). As no other interested party requested the administrative review, and as Ta Chen's request falls within the 90-day time limit provided for withdrawing requests for review, the Department is rescinding this administrative review, in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and 353.213(d)(4).

Dated: March 24, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 98–8551 Filed 3–31–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 97–086R. *Applicant:* The University of Texas at Austin, Bellmont 222, Austin, TX 78712. *Instrument:* 3–D Motion Analysis System, Model Vicon 140. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of October 15, 1997.

Docket Number: 98–015. *Applicant:* Brown University, Center for Advanced Materials Research, 182 Hope Street, Box M, Providence, RI 02912. *Instrument:* Material Preparation and Crystal Growth System, Model MCGS5. *Manufacturer:* Crystallox, Ltd., United Kingdom. *Intended Use:* The instrument will be used to grow single crystals of high temperature metallic materials that will be used for a variety of research projects. *Application accepted by Commissioner of Customs:* March 4, 1998.

Docket Number: 98–016. *Applicant:* University of Wisconsin-Madison, 750 University Avenue, Madison, WI 53706–1490. *Instrument:* High Speed Length Controller, Model 308B. *Manufacturer:* Aurora Scientific Inc., Canada. *Intended Use:* The instrument will be used as part of an experimental apparatus whose purpose is the measurement of the mechanical properties of muscle cells, including heart cells. Experiments will include studies to determine the basis of calcium activation of muscle contraction and the role that calcium plays in the regulation of force generation and shortening speed. *Application accepted by Commissioner of Customs:* March 11, 1998.

Docket Number: 98–017. *Applicant:* University of Colorado Health Sciences Center, Department of Pharmacology (C–236), 4200 E. Ninth Avenue, Denver, CO 80262. *Instrument:* High Intensity Xenon Flashlamp System, Model JML–C1. *Manufacturer:* Hi-Tech Scientific, Germany. *Intended Use:* The instrument will be used in experiments to determine the rapid and synchronous release of neurotransmitters or neuromodulators at specific regions of brain slices from rat hippocampal

tissue. The objective of the proposed investigation is to determine the functional GABA-A receptor action along the dendrites and somal regions of CA1 pyramidal and interneuron cells in the rat hippocampus. *Application accepted by Commissioner of Customs:* March 12, 1998.

Docket Number: 98–018. *Applicant:* Emory University, Department of Neurology, 1639 Pierce Drive, Atlanta, GA 30322. *Instrument:* Electron Microscope, Model H–7500. Manufacturer: Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used for experiments involving the localization of markers of neuronal circuits, the subcellular localization of proteins playing a functional role in brain function or in brain diseases and the examination of changes in the brain that occur in animal models of neurodegenerative disorders. The objectives of the experiments are to learn more about brain circuitry and pharmacology and to help characterize key proteins involved in brain function or disease. The instrument will also be used for educational purposes in training of undergraduate, graduate and post-graduate students in the use of electron microscopy for neuroscience research. *Application accepted by Commissioner of Customs:* March 13, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–8549 Filed 3–31–98; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0009]

In the Matter of Monarch Towel Company, Inc., a Domestic Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Flammable Fabric Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Flammable Fabric Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13. Published below is a provisionally-accepted Settlement Agreement with Safety 1st, Inc., a corporation, containing a civil penalty of $10,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 16, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 26, 1998.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

Monarch Towel Company, Inc., a domestic corporation, (hereinafter, ''Respondent''), enters into this Consent Order Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission (hereinafter, ''Commission'') pursuant to the procedures for Consent Order Agreements contained in 16 CFR 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.13.

This Consent Order Agreement is for the sole purpose of settling allegations of the staff (a) that Respondent violated section 3(a) of the Flammable Fabrics Act (FFA), as amended, 15 U.S.C. 1192(a) and the Standards for the Flammability of Children's Sleepwear (hereinafter, ''Standards''), 16 CFR Parts 1615 and 1616, as more fully set forth in the Complaint accompanying this Agreement; and (b) that Respondent knowingly violated section 3(a) of the FAA, as amended, 15 U.S.C. 1192(a) and the Standards.

Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following Acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 41 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Monarch Towel Company, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 737 Cortlandt Street, Perth Amboy, NJ 08861.

3. Respondent is now and has been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.*, and the Standards for the Flammability of Children's Sleepwear, 16 CFR Parts 1615 and 1616.

4. Respondent denies the allegations of the Complaint that it violated section 3(a) of the FAA, as amended, 15 U.S.C. 1192(a) and the Standards.

5. Respondent denies that it knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a) and the Standards.

6. This Agreement is entered into for the purposes of settlement only and does not constitute a determination by the Commission that Respondent (a) violated or (b) knowingly violated the FFA and the Standards.

7. Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality agree to cease and desist from the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, children's sleepwear that fails to comply with the flammability requirements of the Standards for the Flammability of Children's Sleepwear, 16 CFR Parts 1615 and 1616.

8. Respondent agrees to pay in settlement of the staff's allegations a civil penalty of $10,000 as set forth in the incorporated Order.

9. This Agreement does not constitute an admission by Respondent that a civil penalty is appropriate.

10. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

11. Upon final acceptance of this Consent Order Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (a) to an administrative or judicial hearing, (b) to judicial review or other challenge or contest of the validity of the Commission's actions (c) to a determination by the Commission as to

whether Respondent failed to comply with the Flammable Fabrics Act as aforesaid, (d) to a statement of findings and fact and conclusions of law, and (e) to any claims under the Equal Access to Justice Act.

12. Violation of the provisions of the Order may subject Respondent to a civil and/or criminal penalty for such violation, as prescribed by law.

13. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued; and the Commission may publicize the terms of the Consent Agreement.

14. Agreements, understandings, representations, or interpretations made outside the Consent Order Agreement may not be used to vary or to contradict its terms.

15. Upon acceptance of this Agreement, the Commission shall issue the following Order incorporated herein by reference.

Respondent Monarch Towel Company, Inc.

Dated: February 19, 1998.

Berenice Chadowitz,

Chief Executive Officer, Monarch Towel Company, Inc., 737 Cortlandt Street, Perth Amboy, NJ 08861.

Dated: February 18, 1998.

Ashley Chadowitz,

President and General Counsel, Monarch Towel Company, Inc., 737 Cortlandt Street, Perth Amboy, NJ 08861.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: February 24, 1998.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Agreement of the parties.

I

It is hereby ordered that Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, children's sleepwear that fails to comply with the flammability requirements of the Standards for the Flammability of Children's Sleepwear, 16 CFR Parts 1615 and 1616.

II

It is further ordered that Respondent pay to the United States Treasury a civil penalty *of ten thousand dollars* ($10,000.000) within twenty (20) days after service upon Respondent of the Final Order.

III

It is further ordered that Respondent notify the Commission within 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 26th day of March, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–8460 Filed 3–31–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense, Acquisition and Technology (Industrial Affairs and Installations).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense, Acquisition and Technology (Industrial Affairs and Installations) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 1, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense, Acquisition and Technology (Industrial Affairs and Installations), ATTN: Ms. Katie Smith, 400 Army Navy Drive, Suite 205, Arlington, VA 22202–2884.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Katie Smith (703) 604–2400.

Title, Associated Form, and OMB Number: Base Realignment and Closure (BRAC) Military Base Reuse Status, DD Form 2740, OMB Number 0790–0003.

Needs and Uses: See Supplementary Information below.

Affected Public: All base closure communities and the general public.

Annual Burden Hours: 150.

Number of Respondents: 75.

Responses per Respondent: 2.

Average Burden per Response: 1 hour.

Frequency: Semi-annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Through the Office of Economic Adjustment (OEA), DoD funds are provided to communities for economic adjustment planning in response to closures of military installations. A measure of program evaluation is the monitoring of civilian job creation and type of redevelopment at the former military installations. The respondents to the semi-annual survey will generally include a single point of contact at the local level who is responsible for overseeing redevelopment efforts. If this data is not collected, OEA would have no accurate, timely information regarding the civilian reuse of former military bases. A key function of the economic adjustment program is to encourage private sector use of lands and buildings to generate jobs as military activity diminishes and to serve as a clearinghouse for reuse data.

Dated: March 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–8450 Filed 3–31–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095]

Proposed Collection; Comment Request Entitled Commerce Patent Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0095).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Commerce Patent Regulations, Public Law 98–620. The clearance currently expires on July 31, 1998.

DATES: Comments may be submitted on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

As a result of the Department of Commerce (Commerce) publishing a final rule in the **Federal Register** implementing Public Law 98–620 (52 FR 8552, March 18, 1987), a revision to FAR Subpart 27.3 to implement the Commerce regulation was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060).

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c), 52.228–12(c), and 52.227–13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a); 27.304–1(e)(1)(i) and (ii); 27.304–1(e)(2)(i) and (ii); 52.227–12(f)(7); 52.227–14(e)(3)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227–11, Alternate IV; 52.227–12(f)(5); 52.227–13(e)(1)).

In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(f)(2); 52.227–12(f)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(h); 52.227–12 (h)).

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 3.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows:

Respondents, 1,200; responses per respondent, 9.75; total annual responses, 11,700; preparation hours per response, 3.9; and total response burden hours, 45,630.

OBTAINING COPIES OR PROPOSALS: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: March 27, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–8535 Filed 3–31–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Seneca Army Depot Activity, NY

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this FEIS is the disposal of the Seneca Army Depot Activity (SEDA), New York, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

The FEIS addresses the environmental impacts of the disposal and subsequent reuse of the entire installation except for the property required to create and maintain an enclave for storage of hazardous materials and ores as directed by the BRAC Commission. Alternatives examined in the FEIS include encumbered disposal of the property, unencumbered disposal of the property and retention of the property in a caretaker status (*i.e.*, the no action alternative). The Army's preferred alternative for disposal of SEDA property is encumbered disposal, with encumbrances pertaining to historical resources, remedial activities, easements, wetlands, groundwater use, and unexploded ordnance.

Disposal of the Depot property is the Army's primary action. Reuse of the property is a secondary action that will be taken by others. The FEIS also analyzes the potential environmental effects of reuse by means of evaluating intensity-based probable reuse scenarios. Appropriate to the Depot are low, medium-low, and medium intensity reuse scenarios reflecting the range of activities that could occur after disposal of the property.

The Army proposes to make the majority of the 10,594 acres available to the Seneca County Industrial Development Authority (IDA). The U.S. Coast Guard would obtain 292 acres for continued use of a LORAN–C antenna station. The Army would retain 30 acres for the establishment of a BRAC Commission directed enclave for storage of hazardous materials and ores. This would leave approximately 10,272 acres available for transfer or conveyance.

DATES: Written public comments must be received on or before May 1, 1998.

ADDRESSES: The FEIS is available for review at three libraries: the Waterloo Library and Historical Society, ATTN: Ms. Mary Zingerella, 31 East Williams Street, Waterloo, NY 13165; Edith B. Ford Memorial Library, ATTN: Mr. & Ms. Henry Morris, 7169 North Main Street, Ovid, NY 14521; and Geneva Free Library, ATTN: Ms. Kim Iraci, 244 Main Street, Geneva, NY 14456. Comments can be addressed to and copies may be obtained by writing to Mr. Hugh McClellan, U.S. Corps of Engineers, Mobile District, ATTN: SAMPD, P.O. Box 2288, Mobile, Alabama 36628–0001 or by facsimile at (334) 690–2605.

Dated: March 25, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–8503 Filed 3–31–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Departmant of the Army

Environmental Assessment and Finding of No Significant Impact for the BRAC 95 Disposal and Reuse of Letterkenny Army Depot, Chambersburg, PA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces today the availability of the Environment Assessment (EA) and Finding of No Significant Impact (FNSI) for the disposal and reuse of the Letterkenny Army Depot (LEAD), Chambersburg, Pennsylvania, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The 1995 Defense Base Closure and Realignment Commission (BRAC) recommended the realignment of Letterkenny Army Depot. The proposed action is the disposal of property made available by the realignment of specified missions at LEAD.

The EA evaluates the environmental and socioeconomic effects associated with the disposal and subsequent reuse of the Letterkenny property. The Army proposes to dispose of approximately 1,450 acres of the 2,306-acre cantonment area, in the southeast corner of the installation, which was identified through the BRAC process as surplus property to the DOD needs.

Alternatives examined in the EA include encumbered disposal of the property, unencumbered disposal of the property and no action. The Army's preferred alternative for disposal of the LEAD property is encumbered disposal, which involves conveying the property with conditions imposed pertaining to historical resources, remedial activities, asbestos-containing material, easements and rights-of-way, groundwater use prohibition, lead-based paint, utility dependencies, and wetlands.

The EA, which is incorporated into the FNSI, examines potential impacts of the proposed action and alternatives on 14 resource areas and areas of environmental concern: land use, climate, air quality, noise, water resources, geology, infrastructure, hazardous and toxic materials, permits and regulatory authorizations, biological resources, cultural resources, the sociological environment, economic development, and quality of life.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of a FNSI would be appropriate. An Environmental Impact Statement is not required prior to implementation of the proposed actions.

DATES: Comments must be submitted on or before May 1, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Ellis Pope. Corps of Engineers, Mobile District, ATTN: EN–GH, P.O. Box 2288, Mobile, Alabama 36628–0001, by calling (334) 690–3077, or by facsimile at (334) 690–2721.

Dated: March 25, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I, L&E).

[FR Doc. 98–8504 Filed 3–31–98; 8:45 am]

BILLING CODE 3710–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision on the Final Environmental Impact Statement for the Construction of a Rail Connector, Fort Campbell, KY

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) (February 1997) for the proposed construction of a rail connector for Fort Campbell, Kentucky, has been completed.

The ROD was developed in accordance with Council on Environmental Quality Regulations (40 CFR 1505.2), and Army Regulation 200–2, Environmental Effects of Army Actions. The Notice of Availability of the FEIS for the Fort Campbell rail connector was published in the **Federal Register** on August 11 and August 15, 1997 (62 FR 42968 and 62 FR 43730, respectively). Following a 30 day post-filing waiting period, the Department of the Army prepared the ROD, which is part of the environmental documentation presented for the final decision. In addition to announcing the Army's decision, the ROD also identified the factors that went into the selection of its choice, and described mitigation measures the Army would implement to avoid or minimize environmental impacts associated with the action. Mitigation measures include consultation with the State Historic Preservation Office, adherence to Best Management Practices for Stormwater Runoff and Erosion Control, limiting clearance activities, and proper maintenance of locomotives, railcars, and rail lines. Decisions included in this ROD were made in consideration of information developed during a public scoping meeting, a public hearing, and written and oral comments received during the public comment periods associated with the preparation of the FEIS. The Hopkinsville Bypass South has been chosen as the preferred alternative for the construction of the rail connector.

SUPPLEMENTARY INFORMATION: The Army action analyzed in the FEIS was the construction of a rail connector between the government-owned line and the CSX line in Christian County, Kentucky. The proposed rail connector is needed to meet outload deployment mobility requirements of the 101st Airborne Division at Fort Campbell, Kentucky. The primary mission of the 101st Airborne Division is to deploy rapidly during an emergency. A 1993 evaluation concluded that the present rail system, which can handle the transfer of only five cars at a time and goes through downtown Hopkinsville, severely limited the Division's ability to get its equipment to Jacksonville, Florida, within the required four days after notification to mobilize. The construction of a railroad conector between the government-owned railroad and the CSX line would substantially aid the 101st Airborne Division in meeting this requirement.

The FEIS identified and evaluated five alternative alignments: the No-Action Alternative, which would keep

the current alignment, Hopkinsville Interchange Upgrade; Hopkinsville Bypass North; Hopkinsville Bypass South; and Masonville-Casky. The ROD documents the decision to select Alternative 2S, the Hopkinsville Bypass South. Alternative 2S will involve the construction of a rail connector from the Branch Line directly to the CSX main line south of Hopkinsville and south of the Hopkinsville Bypass (KY 8546). It also incorporates a siding track parallel to the existing Branch Line south of Hopkinsville. This was the Army's preferred alternative, and was chosen based on economic, engineering, and operational considerations, as well as potential environmental impacts and public opinion.

Questions or Request for ROD: Questions regarding the ROD, or a request for copies of the document may be directed to Mr. William Ray Haynes, U.S. Army Corps of Engineers, Louisville District, P.O. 59, Louisville, Kentucky 40201–6475, or call (502) 582–6475.

Dated: March 26, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–8461 Filed 3–31–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.116P]

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Disseminating Proven Reforms Notice inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education, combinations of those institutions, and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: June 5, 1998.

Deadline for Intergovernmental Review: August 4, 1998.

Applications Available: April 2, 1998.

Available Funds: $1,280,000.

Estimated Range of Awards: $120,000-$180,000.

Estimated Average Size of Awards: $160,000.

Estimated Number of Awards: 8.

Project Period: 27 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85 and 86.

Priority

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority: Institutions with innovative postsecondary education programs that became fully institutionalized between 1988 and 1997 are invited to apply for funds to disseminate their practices to other campuses.

Methods for Applying Selection Criteria

The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210:

(a) The need for the proposed project, as determined by—

(1) The magnitude or severity of the problem addressed by the proposed project; and

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) The significance of the proposed project, as determined by—

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies;

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement; and

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) The quality of the design of the proposed project, as determined by—

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) The quality of the management plan for the proposed project, as determined by the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) The quality of the personnel who will carry out the proposed project, as determined by—

(1) The qualifications, including relevant training and experience, of key project personnel; and

(2) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(f) The quality of the evaluation to be conducted of the proposed project, as determined by—

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings;

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project; and

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(g) The adequacy of resources for the proposed project, as determined by—

(1) The extent to which the budget is adequate to support the proposed project;

(2) The extent to which the costs are reasonable in relation to the objectives,

design, and potential significance of the proposed project;

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

FOR APPLICATIONS OR INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. You may also request applications by calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to fipse@ed.gov (e-mail). Applications are also listed on the FIPSE Web Site <http://www.ed.gov/offices/OPE/FIPSE> For additional program information call Beverly Baker at the FIPSE office (202–708–5750) between the hours of 8:00 a.m. and 5:00 p.m., Eastern time, Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites: http://ocfo.ed.gov/fedreg.htm http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a-11.

Dated: March 27, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–8525 Filed 3–31–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR98–12–000]

Longhorn Partners Pipeline, L.P.; Notice of Petition for Declaratory Order, Application for Authority To Charge Market-Based Rates, and Request for Waiver

March 26, 1998.

Take notice that on March 19, 1998, Longhorn Partners Pipeline, L.P., filed a petition for declaratory order, under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure [18 CFR 385.207(a)(2)], and application for a market power determination, under Part 348 of the Commission's regulations [18 CFR Part 348]. Longhorn also seeks waiver of section 342.2 of the Commission's regulations (18 CFR 342.2).

Longhorn states that it presently is engaged in the conversion and construction of an oil pipeline and expects to file initial rates in October 1998 and commence operations as a common carrier of refined petroleum products in November 1998. Before filing its initial rates, Longhorn seeks an advance determination by the Commission that it will not have market power at its origin in Galena Park, Texas, or at its destination at the El Paso, Texas, gateway. Longhorn also requests a waiver of section 342.2 of the Commission's regulations to allow it to justify initial rates by a market power determination.

Any person desiring to be heard or to protest Longhorn's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions or protests should be filed on or before April 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8482 Filed 3–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–13–002]

PECO Energy Company; Notice of Filing

March 26, 1998.

Take notice that on August 15, 1997, PECO Energy Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–8509 Filed 3–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. [1494–140]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

March 26, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of new marina facilities. Grand River Dam Authority proposes to permit Paul Staten, d/b/a Hanger 51—Shangri-La Airpark, (permittee) to construct new marina docking facilities on Isles' End Cove on Grand Lake, the project reservoir. The permittee requests permission to construct a breakwater and six boat docks containing a total of 146 slips. The proposed dock facilities would be located on the northwest shore of the cove adjacent to the Shagri-La Airpark. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

the DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. In the DEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to: Mr. David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. Please affix Project No. 1494–140 to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8483 Filed 3–31–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–153–004]

Southern Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Amended North Alabama Pipeline Project and Request for Comments on Environmental Issues

March 27, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of about 27.1 miles of 16- and 12-inch-diameter pipeline and two meter stations proposed in the Amended North Alabama Pipeline Project.[1] This notice constitutes a scoping process and the comments received in response to this notice will be used to identify significant environmental issues including whether there is a need to prepare a supplemental environmental impact statement (supplemental EIS). The EA (or supplemental EIS) will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner whose property will be crossed by the proposed project, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company may seek to negotiate a mutually acceptable agreement relative to land use and access. However, if the project is approved by the Commission, the pipeline has the right to use eminent domain. Therefore, if negotiations fail to produce an agreement between the pipeline company and landowner, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.

Background

On May 30, 1997, the Commission issued a certificate in Docket Nos. CP96–153–000 and CP96–153–002 authorizing Southern Natural Gas Company (Southern) to construct about 109.5 miles of 16-inch-diameter pipeline, 8.5 miles of 12-inch-diameter pipeline, two compressor units (4,700 horsepower (HP) and 1,600 HP), and three meter stations subject to the conditions in the Order. The certificated route included a crossing of the Wheeler National Wildlife Refuge (Wheeler NWR) along the Triana Variation subject to the approval of the U.S. Fish and Wildlife Service (FWS). After the issuance of the certificate, the FWS determined that this route is not consistent with the FWS policy of issuing rights-of-way only within existing corridors. On February 4, 1998, Southern filed an application with the Commission to change the northern end of the certificated route. The proposed amended 27.1-mile-long route follows existing corridors including Interstate 65 across the Wheeler NWR in the vicinity of the Tennessee River, a powerline right-of-way north of the river, and other rights-of-way.

The EA will only cover the amended route of the pipeline from milepost (MP) 95.25 adjacent to Interstate 67 (about MP 91.2 on the previously certificated route) to the new Huntsville Meter Station, including the Decatur Lateral and Decatur Meter Station. There is no change in the facilities south of MP 95.25 and they will not be reexamined in the EA.

Summary of the Proposed Project

Southern proposes to modify the certificated route of the North Alabama Pipeline in Alabama. Southern still proposes to deliver a total of 69,000 cubic feet per day of natural gas at the Decatur and Huntsville Meter Stations for Decatur Utilities, Huntsville Utilities Gas System, and Marshall County Gas District. The facilities that will be studied in the EA include:

- about 26.9 miles of 16-inch-diameter pipeline in Morgan, Limestone, and Madison Counties, Alabama;
- about 0.2 mile of 12-inch-diameter pipeline in Morgan County, Alabama;
- the Decatur Meter Station in Morgan County, Alabama; and
- The relocated Huntsville Meter Station in Madison County, Alabama.

The detailed location of the facilities is shown in appendix 2.[2]

[1] Southern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Southern proposes to use a 70-foot-wide right-of-way in most areas; but a 90-foot-wide right-of-way would be used in agricultural areas to allow for topsoil segregation north of the Tennessee River. Southern proposes to maintain a 30- to 50-foot-wide permanent easement.

Construction of the proposed facilities would use or disturb about 260 acres of land. Following construction, about 125 acres would be maintained as permanent right-of-way for the pipelines and meter stations. The remaining 135 acres of land that was used for temporary construction right-of-way, extra work space, staging areas, and warehouse/storage yards would be restored and allowed to revert to its former use.

The Environmental Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues and to determine if a supplemental EIS is required. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA and if you believe a supplemental EIS is required the reasons for preparing one. All comments received are considered. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 5 of this notice.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Public safety.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. The EA will be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review of the EA. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern and interested parties. Keep in mind that this is a preliminary list and it may be changed based on your comments and our analysis:

- The crossing of Wheeler NWR between MP 110.9 and MP 113.6 including the crossing of the Tennessee River.
- Disturbance of about 15 acres of forested wetlands, including the conversion of about 9 acres to scrub-shrub wetland.
- The conversion of about 21 acres of upland forest to herbaceous vegetation.
- Potential impact to six residences within 50 feet of the construction work area.
- Alternatives.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow the instructions below to ensure that your comments are received in time and properly recorded:

- Reference Docket No. CP96–153–004;
- Send two copies of your comments to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2; and
- Mail your comments so that they will be received in Washington, DC on or before April 27, 1998.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the form in appendix 3. If you do not comment or return the attached form, you will be dropped from the mailing list.

Becoming an Intervenor

In addition to involvement in the environmental scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4). Only intervenors have the right to seek rehearing of the Commission's decision. If you are an intervenor in the original application (Docket No. CP96–153–000), you are automatically an intervenor in the amended application. You do not need to refile.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8510 Filed 3–31–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00528; FRL–5778–1]

Renewal of Pesticide Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a proposed revision in the burden estimates for the Information Collection Request (ICR) entitled ''Certification of Pesticide Applicators,'' (EPA ICR No. 0155.06, OMB No. 2070–0029). In accordance with the Paperwork Reduction Act, the Office of Management and Budget renewed the approval for the ICR on September 30, 1997, with specific ''terms of clearance.'' The ''terms of clearance'' specify that EPA should solicit public comments on the revised burden estimates for the collection as described below, in particular the Agency's proposal to consider the information required to be maintained by the pesticide applicator, as information that would be maintained as part of customary business practices even without the requirement. If this information is maintained as part of customary and usual practices, the Agency can deduct the burden from the ICR. The Agency will evaluate comments recieved on these assumptions regarding this information and will submit changes, if any, to OMB in order to justify revising the ICR.

DATES: Comments must be submitted on or before June 1, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the complete ICR and accompanying appendices may be obtained from the OPP docket at the above address or by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305–6475, e-mail: kramer.ellen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6053 for a copy of the ICR.

I. Information Collection Requests

Request: EPA is seeking specific comments on the revised burden estimates for the following Information Collection Request (ICR).

Title: Certification of Pesticide Applicators (40 CFR part 171).

ICR numbers: OMB No. 2070–0029, EPA ICR No. 0155.06.

Expiration date: This ICR is scheduled to expire on September 30, 2000. Should EPA amend the burden estimates, this date will not change.

Affected entities: Parties affected by this information collection are certified pesticide applicators who require certification to apply restricted use pesticides, and States, Indian tribes, and Federal agencies with EPA-approved certification plans.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act allows a pesticide to be classified as ''restricted use'' if the pesticide meets certain criteria, one of which is toxicity. Restricted use pesticides, because of their potential to harm people or the environment, may be applied only by a certified applicator or someone under the direct supervision of a certified applicator. In order to become a certified applicator, a person must meet certain standards of competency. The primary mechanism for certifying pesticide applicators is through State certification plans that are approved by EPA. 40 CFR part 171 establishes the criteria for State and EPA-administered certification plans. In addition, these regulations establish criteria for certification plans from Federal agencies or Indian tribes who wish to develop their own program in lieu of using State certification programs.

The recordkeeping and reporting requirements in these regulations allow the Agency to ensure that restricted use pesticides are used only by or under the direct supervision of properly trained and certified applicators, and to monitor the application of restricted use pesticides.

Proposed change: EPA's requirements for commercial applicators consist mostly of information that is already maintained by these businesses as a part of their ordinary and customary business practices. Specifically, EPA requires commercial applicators to maintain the following information specified in § 171.11(c)(7)(i)(A) through (c)(7)(i)(H): the name and address of the person for whom the pesticide was applied; the location of the application, the target pest(s); the specific crop or commodity, as appropriate, and the site to which the pesticide was applied; the year, month, day, and time of the application; the name and EPA registration number of the pesticide applied; the amount applied and percentage active ingredient per unit of pesticide used; and the type and amount of the left over pesticide disposed of, the method and location of the disposal. The information is to be retained for at least 2 years and is only made available upon request by state or EPA authorized officials.

EPA believes that this information is basic information about the customer and the service provided, which would normally be maintained by a commercial applicator even if there was not a requirement to do so. This information essentially documents the business transaction for the commercial applicator, providing a record that the commercial applicator may use for regular billing and referencing purposes, as well as to respond to basic questions from the customer. Although previous ICRs have included a burden estimate for this recordkeeping requirement and the Agency has always asserted that this information would be maintained anyway, the revised Paperwork Reduction Act regulations at 5 CFR 1320.3(b)(2) allows for this requirement

to be excluded from the ''burden'' estimates if the Agency can demonstrate that the respondents would maintain this information even if not required to do so. Please note that removing the burden from the ICR does not affect the requirement itself. Certified applicators are still required to maintain this information.

Burden statement: The annual respondent burden for this program for certified applicators was originally estimated to average 3.5 hours for recordkeeping and 10 minutes for completing applicator certification forms. The Agency is proposing to eliminate the average annual burden estimate of 3.0 hours and the associated cost of $36 per certified applicator, which was previously included in this ICR for the estimated 330,000 commercial applicators and firms that are required to maintain these records. Therefore, the revised burden estimate for certified applicators would be 30 minutes for recordkeeping and 10 minutes for certification forms. For a total revised burden of 40 minutes which represents a reduction of 3 hours related to the recordkeeping.

According to the Paperwork Reduction Act, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; processing and maintaining information, and disclosing and providing information; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

1. Evaluate whether the proposed collection of information described above is ''usual and customary'' information that certified applicators maintain for their business. If not, identify the item(s) that are not part of ''usual and customary'' information.

2. Evaluate the accuracy of the Agency's revised estimate of the burden of the proposed collection of information for certified applicators, including the validity of the methodology and assumptions.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or permitting electronic submission of responses.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, OPPE Regulatory Information Division, Mail Code 2137, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Include the OMB control number in any correspondence, but do not submit the form or report to this address. The actual information or form should be submitted in accordance with the instructions accompanying the information or form, specified in the corresponding regulation.

Send comments regarding these matters, or any other aspect of this information collection, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

III. Public Record and Electronic Submissions

The official record for this document, as well as the public version, has been established for this document under docket control number ''OPP–00528'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00528.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection and Information collection requests.

Dated: March 23, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–8209 Filed 3–31–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards, Standards of Performance for Storage Vessels of Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978 and Prior to July 23, 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, OMB Control Number 2060–0121 expiring on May 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 1998.

FOR FURTHER INFORMATION: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1050.06.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, (OMB Control Number 2060–0121; EPA ICR No. 1050.06) expiring on May 31, 1998. This is a request for an extension of a currently approved collection.

Abstract: In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Generally, this information will be readily available because it is needed for plant records. As a result, there should be no additional burden from these requirements.

The format of the rule is that of an equipment standard. A performance test is not required because conducting a performance test is not feasible for floating roofs. Floating roofs are subject to visual inspections and periodic measurements. Flares must meet the General Provisions at section 60.18(f). The owner/operator must notify the date of construction or reconstruction no later than 30 days after such date, notify 60 days prior to a physical or operational change to an existing facility which may increase emissions, record occurrences of any start-up, shutdown or malfunction, record gap measurements: primary seals every five years, secondary seals every year, report within 60 days if seal gap measurements exceed regulatory limits (§ 60.112a), provide notice 30 days prior to seal gap measurement, provide information on vapor recovery system including emissions data, operations design and maintenance plan and record whenever the liquid is changed, type of petroleum liquid, period of storage and maximum true vapor.

Information generated by notifications, recordkeeping, and reporting requirements is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment used to achieve compliance. Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. If the information were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by the new, modified, or reconstructed sources subject to the regulation. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the recordkeeping requirements, the standards could be enforced only through continuous onsite inspection by regulatory agency personnel. Consequently, not collecting the information results in (1) greatly increased resource requirements for enforcement agencies or (2) the inability to enforce the standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/02/97 (62 FR 63703); zero comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 115 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Respondents/Affected Entities: Owners of storage vessels for petroleum liquids.

Estimated Number of Respondents: 183.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 20,954 hours.

Estimated Total Annualized Cost Burden: 0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1050.06 and OMB Control No. 2060–0121 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs,
Office of Management and Budget,
Attention: Desk Officer for EPA 725 17th Street, NW,
Washington, DC 20503.

Dated: March 26, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–8528 Filed 3–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–5]

Risk Assessment Forum Report on Assessment of Thyroid Follicular Cell Tumors

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of Risk Assessment Forum report.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the availability of an EPA Risk Assessment Forum report entitled, Assessment of Thyroid Follicular Cell Tumors (hereafter ''Forum Report''). The Forum Report presents science policy guidance that describes the procedures the Agency will use in the evaluation of potential human cancer hazard and dose-response assessments from chemicals that are animal thyroid carcinogens. The Forum Report describes when, under clearly specified conditions, chemical carcinogenesis in thyroid follicular cells can be analyzed as a nonlinear phenomenon, rather than assuming low dose linearity as EPA customarily does for carcinogenic compounds. Four hypothetical case studies are summarized which illustrate how to evaluate toxicological data and make hazard and dose-response estimation choices. The procedures and considerations developed in the Forum Report embody current scientific knowledge of thyroid carcinogenesis and evolving science policy. Should significant new information become available, the Agency will update its guidance accordingly.

ADDRESSES: An electronic version of the Forum Report is accessible from EPA's National Center for Environmental Assessment Internet home page at http://www.epa.gov/ncea. Interested parties can obtain a single copy of the report by contacting ORD Publications, Technology Transfer and Support Division, National Risk Management Research Laboratory, Cincinnati, Ohio by calling 513–569–7562, or by sending facsimile to 513–569–7566. Please provide your name and mailing address, and request the document by title and the EPA document number (EPA/630/R–97/002) when ordering. There will be

a limited number of paper copies available from the above source. Requests will be filled on a first-come-first-served basis as print copies become available. After the supply is exhausted, copies of the report can be purchased by contacting the National Technical Information Service (NTIS), by calling 703–487–4650, or by sending a facsimile to 703–321–8547.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (8601–D), 401 M Street, S.W., Washington, DC, 20460, telephone (202) 564–3361.

SUPPLEMENTARY INFORMATION: In 1986 EPA published cancer risk assessment guidelines (51 FR 33996) and recently proposed revisions to these guidelines (61 FR 17960). From time to time scientific developments prompt the Agency to reexamine its risk assessment guidance (e.g., the assessment of male rat kidney tumors, 57 FR 8123). The National Research Council (NRC) in their 1994 report Science and Judgment in Risk Assessment emphasized that well designed guidelines should permit acceptance of new evidence that differs from what was previously perceived as the general case, when scientifically justifiable. In keeping with this principle, the NRC recommended that EPA be more precise in describing the kind and strength of evidence that it will require to depart from a default option and which procedures will be applied in such situations. That is the case with the review of some chemicals that have produced thyroid follicular cell tumors in experimental animals.

EPA's Guidelines for Carcinogen Risk Assessment provide direction for performing hazard and dose-response assessments for carcinogenic substances. The guidelines generally operate on the premise that findings of chemically induced cancer in laboratory animals signal potential hazards in humans. Likewise, for dose-response analyses, the guidelines first call for use of the most biologically appropriate means for dose extrapolation. In the absence of such knowledge, assessors are directed toward the use of a default science policy position, a low-dose linear procedure.

Thyroid gland follicular cell tumors are fairly common in chronic studies of chemicals in rodents. Experimental evidence indicates that the mode of action for these rodent thyroid tumors involves (a) changes in the DNA of thyroid cells with the generation of mutations, (b) disruption of thyroid-pituitary functioning, or (c) a combination of the two. The only verified cause of human thyroid cancer is ionizing radiation, a mutagenic insult to which children are more sensitive than adults.

In 1988, the Agency organized a review of the existing science on thyroid follicular cell carcinogenesis and a draft science policy position covering the evaluation of chemicals that have induced thyroid tumors in experimental animals (53 FR 20685). The EPA Science Advisory Board (SAB) approved the science review and tentatively embraced the policy position that in clearly specified circumstances some thyroid tumors could be assessed using nonlinear considerations. However, they recommended that the Agency (a) articulate more clearly the steps that lead to the use of nonlinear considerations in assessments and (b) illustrate, using case studies, the ways EPA would evaluate data on animal thyroid carcinogens and make projections of anticipated human risk from chemicals that are animal thyroid carcinogens. The Agency revised the Forum Report accordingly, incorporating an update of the scientific literature, and on July 19, 1996 the SAB reviewed and approved the revised Forum Report (61 FR 32796).

The scientific analysis and science policy statement in this Forum Report apply only to tumors involving follicular cells of the thyroid gland. The Forum Report does not analyze or address comparable issues for other endocrine organs.

Dated: March 18, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–8527 Filed 3–31–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–6]

Palmerton Zinc Superfund Site De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into *de minimis* settlements pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA) 42 U.S.C. 9622(g)(4). The proposed settlements are intended to resolve the potential liability under CERCLA of homeowners of 27 residences as *de minimis* parties for response costs incurred by the United States Environmental Protection Agency at the Palmerton Zinc Superfund Site, Carbon County, Pennsylvania.

DATES: Comments must be provided on or before May 1, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and should refer to: In Re: Palmerton Zinc Superfund Site, Carbon County, Pennsylvania, U.S. EPA Docket Nos. III–97–11–DC, III–97–12–DC, III–97–13–DC, III–97–14–DC, III–97–17–DC, III–97–18–DC, III–97–19–DC, III–97–24–DC, III–97–26–DC, III–97–28–DC, III–97–30–DC, III–97–32–DC, III–97–40–DC, III–97–42–DC, III–97–45–DC, III–97–47–DC, III–97–49–DC, III–97–50–DC, III–97–52–DC, III–97–53–DC, III–97–54–DC, III–97–55–DC, III–97–56–DC, III–97–58–DC, III–97–64–DC, III–97–66–DC, and III–97–69–DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Nadolski (3RC32), Office of Regional Counsel, United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–2673.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of proposed administrative settlements concerning the Palmerton Zinc Site in Carbon County, Pennsylvania. The administrative settlements were signed by the Regional Administrator of the United States Environmental Protection Agency, Region III, on April 11, 1997, and are subject to review by the public pursuant to this Notice. The agreements were also subject to the approval of the Attorney General, United States Department of Justice or her designee.

The 27 parties agree to allow complete access to their properties by EPA and its representatives and to cooperate and not to interfere with the activities of EPA or its representatives during an ongoing response action to remove lead, cadmium and zinc contamination from their properties in Palmerton, Pennsylvania in exchange for receiving a covenant not to sue pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), and contribution protection pursuant to Section 113(f) of CERCLA, 42 U.S.C. 9613(f). The

agreements are subject to the contingency that the Environmental Protection Agency may elect not to complete the settlements based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into these agreements under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their potential liability under CERCLA. Under this authority, EPA proposes to settle with homeowners at the Palmerton Zinc Site who meet the standards for a *de minimis* landowner settlement under CERCLA Section 122(g)(1)(B), 42 U.S.C. 9622(g)(1)(B). The Environmental Protection Agency will receive written comments to these proposed administrative settlements for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Orders on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC00), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, by contacting Cynthia Nadolski, Senior Assistant Regional Counsel, at (215) 566–2673.

Alvin R. Morris,

Acting Regional Administrator, U.S. EPA Region III.

[FR Doc. 98–8529 Filed 3–31–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–557]

License Renewal Procedures for Certain 800 MHz Conventional SMR Licenses on General Category Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Public Notice, the Wireless Telecommunications Bureau (Bureau) describes the license renewal procedures for certain 800 MHz conventional SMR licenses on General Category channels. Specifically, the Bureau reminds the licensees of their responsibility to apply for renewal of their license prior to the expiration date of the license. Pursuant to the Commission's rules, failure to file for renewal will result in automatic cancellation of the license on the license expiration date.

FOR FURTHER INFORMATION CONTACT: Terry Fishel at (717) 338–2602 or Ramona Melson, Tejal Mehta or David Judelsohn at (202) 418–7240.

SUPPLEMENTARY INFORMATION: The Commission currently has a large number of 800 MHz conventional Specialized Mobile Radio (SMR) licensees on General Category channels that received an extension of time from eight months to twelve months to construct their facilities and commence operation pursuant to the Commission's decision in Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of sections 90.633(c) and 1.1102 of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd. 8537 (1995) (Goodman/Chan Order). These affected licensees include the Goodman/Chan licensees, who are the approximately 4400 licensees who obtained 800 MHz SMR licenses on General Category channels by using the services of one of four companies that were the subject of an enforcement action brought by the Federal Trade Commission. These four companies are Metropolitan Communications Corp., Nationwide Digital Data Corp., Columbia Communications Services, and Stephens Sinclair, Ltd. The Goodman/Chan Order will become effective upon publication in the **Federal Register**. Goodman/Chan Order, 10 FCC Rcd. at 8551. The Goodman/Chan Order was not immediately published in the **Federal Register** because the Receiver representing the bankrupt licensing companies sought a stay of publication of the Goodman/Chan Order in the **Federal Register** until the Commission agreed to resolve other related issues. Also included within this group are other licensees who have filed waivers seeking relief similar to that granted to the Goodman/Chan Licensees pursuant to the Goodman/Chan Order. The Bureau has not ruled on the requests filed by these licensees and they remain pending.

Because the license terms for some of these licensees are to expire in the near future, the Bureau reminds these licensees that it is the responsibility of each licensee to apply for renewal of its license prior to the expiration date of the license, pursuant to 47 CFR 90.149(a). According to the Commission's rules, in 47 CFR 1.926(a)(1), 800 MHz SMR licensees will receive an Application for Renewal of Private Radio Station License Form (FCC Form 574–R) in the mail from the Commission. If within sixty days before the scheduled expiration of the license, the licensee has not received FCC Form 574–R, the licensee should file a Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information Form (FCC Form 405–A) before the expiration date of the license to renew the license. Thus, failure of a licensee to receive a FCC Form 574–R from the Commission is no excuse for failure to file a renewal application. The license renewal application should be filed in accordance with the Commission's rules at 47 CFR 90.127(b) and the instructions for the appropriate form. In accordance with the Commission's rules, failure to file a license renewal application prior to the license expiration date results in the automatic cancellation of the license on its expiration date. Licensees are also reminded to submit the appropriate fee with the license renewal form.

Licensees may apply for reinstatement of an expired license no later than thirty days after the expiration date of the license. See 47 CFR 90.127(b), 90.149(a). However, reinstatement of the license is not guaranteed. Because no decision has been rendered which, if any, of the licensees with pending waiver requests will be granted relief similar to that granted to the Goodman/Chan Licensees in the Goodman/Chan Order, it is possible that the licenses of such licensees who herein file for a license renewal or reinstatement may subsequently be terminated for failure to construct. Therefore, any renewal or reinstatement of the licenses will not prejudice the outcome of our decision regarding any pending licensees' waiver requests or the resolution of any outstanding issues involving the implementation of waivers previously granted.

Federal Communications Commission.

Daniel Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–8572 Filed 3–31–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011279–007.
Title: The Latin America Agreement.
Parties:
Central America Discussion Agreement,
Southeastern Caribbean Discussion Agreement,
Hispaniola Discussion Agreement,
U.S./Jamaica Discussion Agreement,
Venezuela American Discussion Agreement,
Caribbean Shipowners Association, Aruba Bonaire Curacao Liner Association,
Inter-American Freight Conference,
Venezuelan Discussion Agreement,
Puerto Rico/Caribbean Discussion Agreement,
And the component member lines of each of the agreements named above.
Synopsis: The amendment adds the West Coast of South America Agreement and its member lines as a party to the Agreement.

Agreement No.: 232–011374–001.
Title: Wilhelmsen/Contship Slot Charter Agreement.
Parties:
Wilhelmsen Lines AS,
Contship Containerlines Limited.
Synopsis: The proposed amendment republishes the Agreement and adds a provision clarifying that this Agreement is also applicable to space made available to the parties under other vessel sharing agreements in effect under the Shipping Act of 1984. It also specifies the number and capacities of the vessels the parties will operate under the Agreement and adds terminal usage and joint advertising to the activities covered by the Agreement.

Agreement No.: 224–201048.
Title: Philadelphia Tioga Terminal Lease and Operating Agreement.
Parties:
Philadelphia Regional Port Authority,
Delaware River Stevedores, Inc.
Synopsis: The proposed agreement concerns the leasing of the Tioga Marine Terminal complex as well as the terms and conditions under which the cargo and freight handling services at that complex are performed. The term of the agreement runs from April 1, 1998 through March 31, 2003.

Agreement No.: 224–201049.
Title: Tampa-Tampa Bay International Wharfage Incentive Agreement.
Parties:
Tampa Port Authority,
Tampa Bay International Terminals, Inc.
Synopsis: The proposed agreement concerns the conditions and rates of a wharfage incentive. The term of the agreement runs through March 31, 1999.

By Order of the Federal Maritime Commission.

Dated: March 26, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–8484 Filed 3–31–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with Peoples Holding Corporation, Minden, Louisiana, and thereby indirectly acquire Peoples Bank and Trust Company, Minden, Louisiana.

2. Unity Holdings, Inc., Cartersville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Unity National Bank, Cartersville, Georgia (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. CNB Bancshares, Inc., Evansville, Indiana; to merge with National Bancorp, Tell City, Indiana, and thereby indirectly acquire TCB Bank, Tell City, Indiana.

Board of Governors of the Federal Reserve System, March 26, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8454 Filed 3–31–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. FirstFederal Financial Services Corp., Wooster, Ohio; to acquire First Shenango Bancorp, Inc., New Castle, Pennsylvania, and First Federal Savings Bank of New Castle, New Castle, Pennsylvania, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 26, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8455 Filed 3–31–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, April 6, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–542–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8604 Filed 3–27–98; 4:49 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. Analysis of Employer Group Long-Term Care Insurance—New—The Office of the Assistant Secretary for Planning and Evaluation is planning to survey employers offering group long-term care insurance in order to identify current products and best practices. Respondents: State or local governments, Businesses or other for-profit, non-profit institutions; Number of Respondents: 125; Burden per Response: 1.33 hours; Total Burden: 167 hours.

Send comments to Cynthia Agnes Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: March 18, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–8501 Filed 3–31–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

AHCPR Health Services Research

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of Availability.

SUMMARY: The Agency for Health Care Policy and Research (ANCPR) announces release of a Program Announcement of its broad priority interests for extramural grants for research, demonstration, dissemination, and evaluation projects to: (1) Support Improvements in Health Outcomes; (2) Strengthen Quality Measurement and Improvement, including the use of evidence-based practice information and tools; and (3) Identify Strategies to Improve Access and Foster Appropriate Use and Reduce Unnecessary Expenditures, including research on the organization, financing, and delivery of health care and the characteristics of primary care practice.

The Program Announcement (PA) of ongoing AHCPR research interests was published in the *National Institutes of Health (NIH) Guide for Grants and Contracts* on March 26, 1998. The PA is available from AHCPR's Website. (See **ADDRESSES**.)

Eligible applicants include nonprofit domestic and foreign organizations including universities, clinics, units of State and local governments, and foundations. For-profit organizations may participate as members of consortia or subcontractors.

DATES: Applications may be submitted at the standard receipt dates for new PHS research grants: February 1, June 1, and October 1, annually. See Application and Instructions, form PHS 398 (rev. 5/95).

ADDRESSES: Interested applicants should obtain application materials, which include the PA, from the AHCPR contractor: Equals Three Communications, Inc.; 7910 Woodmont Avenue, Suite 200; Bethesda, MD 20814–3015; Telephone: 301/656–3100; FAX: 301/652–5264.

The PA is available through AHCPR's Web site (http://www.ahcpr.gov under Funding Opportunities) and from the electronic NIH Guide at http://www.nih.gov/grants/guide/index.html). It can also be obtained through AHCPR InstantFAX at 301/594–2800. To use the 24-hour InstantFAX, callers must use a FAX machine with a telephone handset, and follow the voice instructions. For questions about this service, call Judy Wilcox, Office of Health Care Information, at 301/594–1364, ext. 1389.

SUPPLEMENTARY INFORMATION: The AHCPR mission is to support and conduct research to improve the outcomes, quality, access to, and cost and utilization of health care services. AHCPR achieves its mission through health services research designed to (1) improve clinical practice, (2) improve the health care system's ability to provide access to and deliver high quality, high-value health care, and (3) provide policy makers with the ability to assess the impact of system changes on outcomes, quality, access, cost, and use of health care services.

The AHCPR research agenda is designed to be responsive to the needs of consumers, patients, clinicians and other providers, plans, purchasers, and policy makers for evidence-based information which they need in order to improve health care quality and outcomes, control costs, and assure access to needed services.

The PA sets out priority interests in research, demonstration, dissemination and evaluation projects under broad program areas as follows:

(1) Support improvements in health outcomes. AHCPR seeks to support research to better understand the outcomes of health care, at both the clinical and systems levels; and, in particular, what works, for whom, when, and at what cost.

(2) Strengthen quality measurement and improvement. This area of interest includes research on the use of evidence-based practice information.

(3) Identify strategies to improve access, foster appropriate use and reduce unnecessary expenditures. This area includes research on access, use, and cost of health services; organization, financing, and delivery; and primary care practice.

AHCPR has identified as a special focus of research across the major program areas, health issues related to priority populations, identified as minority populations, women, and children.

The PA also identifies as emerging research interests two additional areas that are becoming increasingly important in today's market-driven health care delivery system. These are research on methodologic advances in health services research, especially cost-effectiveness analysis, and research on ethical issues across the spectrum of health care delivery.

The AHCPR is encouraging research using data from the Medical Expenditure Panel Survey (MEPS), developed by AHCPR with collaboration by the National Center for Health Statistics, and other AHCPR-supported data bases such as the Health Care Cost and Utilization Project (HCUP–3).

Also encouraged are partnerships with private and public organizations to facilitate development and sharing of scientific knowledge and resources, including cost-sharing mechanisms; projects that will produce results within 2 to 3 years; and results that can be integrated rapidly into practice or policy.

Potential applicants and other interested organizations and individuals should obtain a copy of the complete PA for details on AHCPR interests, program contracts, application procedures, and review and award criteria.

Dated: March 26, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–8513 Filed 3–31–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No: CB–98–02]

Fiscal Year 1998 Discretionary Announcement and Request for Applications for Two National Technical Assistance Resource Centers, and Community-Based Family Resource Grants to Tribal and Migrant Populations

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Fiscal Year 1998 discretionary announcement and request for applications for two national technical assistance resource centers, and community-based family resource grants to tribal and migrant populations

SUMMARY: The Children's Bureau and its Office on Child Abuse and Neglect announce the availability of fiscal year 1998 funding and request for applications to support a National Resource Center for Programs Serving Abandoned Infants and Infants At Risk of Abandonment and Their Families (as authorized by Pub. L. 104–235, the Abandoned Infants Assistance Act of 1988, as amended); a National Resource Center for Community-Based Family Resource and Support Programs; and Grants to Tribes, Tribal Organizations, and Migrant Programs for Community-Based Family Resource and Support Programs (as authorized by the Child Abuse Prevention and Treatment Act, as amended by Pub. L. 104–235 [1996]).

Note: Pursuant to the Child Abuse Prevention and Treatment Act (CAPTA) Amendments of 1996 (Pub. L.104–235), the Department of Health and Human Services announced in the December 8, 1997, **Federal Register**, the elimination of the National Center on Child Abuse and Neglect (NCCAN) and the consolidation of child abuse and neglect functions within the Children's Bureau.

STATUTORY AUTHORITY COVERED UNDER THIS ANNOUNCEMENT: The Children's Bureau solicits applications under the authority of Pub. L. 104–235: the Abandoned Infants Assistance Act of 1988, as amended (42 U.S.C. 670) (CFDA: 93.551); and the Child Abuse Prevention and Treatment Act (CAPTA), as amended in 1996 (42 U.S.C. 5101 *et seq.*) (CFDA: 93.590).

DATES: The closing date for the receipt of applications under this announcement June 1, 1998. In order to be eligible for competition, mailed applications must be POSTMARKED on or before this date, and hand delivered applications must be RECEIVED on or before this date.

ADDRESSES: *Intent to Apply:* If you are going to submit an application, call in the following information within two weeks of the receipt of this announcement: The name, address, and telephone number of the contact person; the name of the organization; and the priority area(s) in which you may submit an application or send a postcard with the information to: Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Hwy, Suite 414, Arlington, VA 22202. The telephone number is 1–800–351–2293. This information will be used to determine the number of expert reviewers needed and to update the mailing list of persons to whom future program announcements will be sent.

Mailed Applications and Overnight/Express Mail Service: Mailed applications and applications delivered by overnight/express mail services shall be considered as meeting an announced deadline if they are *POSTMARKED* on or before the deadline date and sent to the Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Hwy, Suite 414, Arlington, VA 22202. The telephone number is 1–800–351–2293. Any application *POSTMARKED* after the deadline date will not be considered for competition.

Hand Delivered Applications, Applicant Couriers: Applications *hand delivered by applicants or applicant couriers* shall be considered as meeting an announced deadline if they are *RECEIVED* on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Hwy, Suite 414, Arlington, VA 22202. The telephone number is 1–800–351–2293. Any application received after 4:30 p.m. on the deadline date will not be considered for competition.

Electronic Transmissions: ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted

regardless of date or time of submission and time of receipt.

Review Process: A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should address each requirement under the Project Design, Results and Benefits, and Staff Background sections in detail. The reviewers will (1) determine the strengths and weaknesses of each application, using the evaluation criteria listed below; (2) provide verbal and written comments; and (3) assign numerical scores to each application. The point value following each criterion heading is the maximum score for that criterion.

Summary of Priority Areas and Funds Availability: The Children's Bureau and its Office on Child Abuse and Neglect are accepting applications in the following three Priority Areas:

Priority Area 1.01 National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families

It is anticipated that one project will be funded as a coopertive agreement. Up to $675,000 in Federal funds are available for the first 12 month budget year or $2,700,000 for the four years of the project. Awards for subsequent budget periods, after the first year of the project, may exceed $675,000 if such funds become available.

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher education may apply.

Purpose: To provide training and technical assistance that will assist in the development, enhancement and coordination of services, exchange of information and the continuing development, expansion and strengthening and improvement in the quality and effectiveness of programs described in Pub. L. 104–235, the Abandoned Infants Assistance Act of 1988, as amended whether or not the service providers receive funds authorized under the Act. The Act provides financial support for demonstration projects to prevent the abandonment of infants and young children, particularly those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus or who have been perinatally exposed to a dangerous drug; to identify and address the needs of those infants and young children who are, or might be abandoned; to develop a program of comprehensive services for those children and their families which will strengthen family functioning and prevent abandonment, including family foster care, case management, family support, parenting skills, in-home support services, respite and crisis intervention, counseling and group residential care services; to recruit and train health and social services personnel, foster care families and residential providers to meet the needs of infants and young children who are at risk of abandonment; and to develop permanency options for children who cannot return home.

Evaluation Criteria: (a) Objectives and Need for Assistance (20 Points)

The extent to which the applicant:

- Demonstrates the need for providing training and technical assistance to public and private agencies delivering services to drug and/or HIV-exposed children and families;
- Addresses the goals of the legislative mandate to meet the service needs of infants who have been exposed to a dangerous drug or who have been perinatally exposed to HIV/AIDS and who may be at risk of abandonment;
- Identifies the training and technical assistance goals that address the social service support needs of women impacted by substance-abuse and/or HIV/AIDS and for whom those supports will enhance family stability and functioning.
- Describes the objectives, goals and needs for training and technical assistance that address program/community/state needs on programming for the targeted families.

(b) Results and Benefits Expected (10 Points)

The extent to which the applicant:

- Identifies the results and benefits to be derived from the project and links these to the stated objectives;
- Describes how the lessons learned from the project will benefit policy, practice, theory and/or research in addressing the social service needs of substance-abusing or HIV/AIDS women and their families.

(c) Approach (40 Points)

The extent to which the applicant:

- Outlines a workable plan of action which relates to the stated objectives and scope of the project and reflects the intent of the legislative mandates;
- Details how the proposed work will be accomplished including a discussion of factors that might accelerate or decelerate the work;
- Lists the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates;
- Describes any unusual features of the project, such as design or technological innovations or reductions in cost or time;
- Describes a plan for providing technical assistance to AIA grantees on the required third-party evaluation efforts;
- Describes the kinds of third-party data to be collected from AIA-funded projects and describes a method of analysis for capturing the outcome indicators across the sites that reflect the achievements of the AIA-funded projects;
- Describes strategies that will assist the project in improving services to ensure permanency for infants and young children who are abandoned or are in danger of abandonment and in providing technical assistance regarding standby guardianships and testamentary planning; and
- Identifies each organization, agency, consultant or other key individuals or groups who will work on the project along with a description of the activities each will undertake and the nature of their effort or contribution.

(d) Staff and Position Data (10 Points)

The extent to which the applicant:

- Demonstrates that the proposed project director and key project staff, including evaluators, have the ability and experience to administer effectively and efficiently a project of this size, scope and complexity, including their experience and background in working with public and private programs providing social services and their familiarity with child welfare issues;

(e) Organization Profiles (10 Points)

The extent to which the applicant:

- Details the organization's experience in addressing the training and technical assistance needs of programs that serve women and families impacted by substance-abuse and/or HIV/AIDS; and
- Describes the adequacy of the applicant's management plan to ensure its capacity and efficiency to accomplish the goals of the project.

(e) Budget and Budget Justification (10 Points)

The extent to which the applicant justifies the following:

- Costs are reasonable in view of the activities to be conducted and the expected results and benefits;
- Salaries and fringe benefits reflect the level of compensation appropriate for the proposed staff responsibilities; and
- The non-Federal contribution of the total project costs.

Priority Area 1.02: National Resource Center for Community-Based Family Resource and Support Programs

It is anticipated that one project will be funded as a coopertive agreement. The maximum Federal share of this project is not to exceed $300,000 for each 12-month budget period. The length of this project will be for 12 months, with non-competitive renewable funding at the same level for three additional 12-month periods, assuming satisfactory completion of the terms of the Cooperative Agreement on a year-by-year basis, and assuming the continued availability of funds for this program.

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher education may apply. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: The purpose of this Cooperative Agreement is to provide financial support for training and technical assistance to promote the purposes of the Community-Based Family Resource and Support (CBFRS) Grants program. This training and technical assistance is intended to build the capacity of CBFRS lead agencies to: (1) foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect; (2) facilitate and assist efforts of State, local, Tribal, public, and private agencies in the interagency, inter-disciplinary, coordinated planning and development of a Statewide Network of community-based, prevention-focused, family resource and support programs; (3) encourage public and private partnerships, including parents who are consumers, in the establishment and expansion of family resource and support programs; and (4) promote the development and implementation of lead agency program evaluation processes that include a peer review component.

Expected outcomes include the enhanced capacity of each State lead agency to engage in: (1) Developing and maintaining a Statewide Network of family support services; (2) conducting interagency needs assessments of required services; (3) facilitating CBFRS program and policy development; (4) coordinating the delivery of family resource services; and (5) conducting program evaluations that include a peer review component.

This project is expected to train and assist State lead agencies to establish effective interagency cooperation and collaboration that involves all stakeholders, including families, and promotes public-private partnerships in the establishment and expansion of family resource and support programs. Training and technical assistance needs will be identified by State CBFRS lead agency staff in collaboration with ACYF Central and Regional Office personnel, and coordinated with other ongoing national training and technical assistance efforts. Training outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups.

Evaluation Criteria: (a) Objectives and Need for Assistance (15 points). The application identifies the training and technical assistance objectives of the project which address: The plan for building the capacity of State, and local public and private agencies to create Statewide Networks of community-based, prevention-focused, family resource and support programs; and the training to enable CBFRS lead agencies to facilitate the development and implementation of evaluation processes that will determine the efficacy and impact of these networks and programs. Objectives must address each of the Project Design requirements of this priority area as described below. The applicant describes the need for providing training and technical assistance to public and private agencies linked to the CBFRS program, and demonstrates an understanding of the goals of the legislative mandate.

(b) Approach (35 points). The application outlines a workable plan of action which relates to the stated objectives and scope of the project and reflects the intent of the legislative mandates, which:

—Details how the proposed work will be accomplished including a discussion of factors that might accelerate or decelerate the work;
—Lists the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates;
—Describes any unusual features of the project, such as design or technological innovations or reductions in cost or time;
—Describes a plan for providing technical assistance to CBFRS grantees on the development and implementation of evaluation processes that will determine the efficacy and impact of these networks and programs;
—Describes strategies for building the capacity of State, and local public and private agencies to create Statewide Networks of community-based, prevention-focused, family resource and support programs; and for providing technical assistance to CBFRS lead agencies in this area;
—Provides a plan for promoting: (1) Interagency collaboration and implementation of new procedures for blending funding streams; (2) collaborative long-range planning of family support services and service delivery options; and (3) management improvement strategies that facilitate interagency coordination;
—Describes a plan to establish an advisory board that will provide overall program direction and guidance to the activities of the Center, and strategies for efficiently and effectively utilizing their expertise;
—Provides a plan to help lead agencies develop a child-focused, family-centered approach to the delivery of family support services, that reinforces and complements the State's efforts to provide services to preserve and support families, and emphasizes the prevention of child abuse and neglect;
—Provides a plan for coordinating activities with other National Resource Centers and Clearinghouses funded by the Children's Bureau and other sources;
—Describes a plan for ensuring that the Resource Center's services, program activities, and materials developed are provided in a manner that is racially and culturally sensitive to the population being served;

(c) Results or Benefits Expected (20 points). The application identifies the results, benefits, and level of customer satisfaction to be derived by lead agencies for the CBFRS program and their State and local constituents, and proposes measurement procedures for each; the extent to which the results and benefits are consistent with the stated objectives; the extent to which results and benefits contribute to lead agency policy and practice; and the extent to which the training and technical assistance project costs are reasonable in view of the expected results.

(d) Evaluation (10 points). The applicant provides an evaluation plan which:

—Includes methods and criteria to evaluate the results and benefits of the technical assistance project in terms of its stated objectives;
—Addresses both process and outcome evaluation;
—States goals and objectives in specific measurable form to document change, improvement, or effectiveness;

—Identifies the kinds of data to be collected.

(e) Staff and Position Data (10 points). The application identifies the educational and professional background of the project director and key project staff to demonstrate the applicant's ability to administer and implement the project effectively and efficiently. The role of the author(s) of the proposal, including ongoing involvement in the implementation and/or administrative structure is explicitly identified.

(f) Organization Profiles (10 points). The application identifies the experience of the organization which most clearly demonstrates the applicant's ability to administer and implement the project effectively and efficiently; and provides documentation of the applicant agency's experience in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) recruiting, assigning, and deploying staff with appropriate experience in the delivery of training and technical assistance; and (4) designing, developing, delivering and evaluating training materials.

Priority Area 1.03: Grants to Tribes, Tribal Organizations, and Migrant Programs for Community-Based Family Resource and Support Programs

It is anticipated that three grants (one each to a tribe, a tribal organization, and a migrant program) will be funded under this announcement. The Federal share of this project will be $109,450 per grantee for fiscal year 1998. The maximum Federal share of this project is not to exceed one-third (⅓) of one percent (1%) of the Federal appropriation for Title II for each 12-month budget period. It is anticipated that three grants of $109,450 (one each to a tribe, a tribal organization, and a migrant program) will be funded under this announcement. Applicants must specify if they are applying as a ''Tribe'' or ''Tribal Organization'' or ''Migrant Program''.

Eligible Applicants: Indian tribes, tribal organizations, and migrant programs with the capacity to establish and maintain family resource services for the prevention of child abuse and neglect and linkages with the State Network of Community-Based Family Resource and Support Programs may apply. Collaborative efforts and interdisciplinary approaches are encouraged.

Purpose: The primary purpose of this priority area is to provide financial support to selected tribes, tribal organizations, and migrant programs to develop linkages with the Community-based Family Resource and Support (CBFRS) State Network funded under Title II of CAPTA, and/or to provide services otherwise consistent with the purposes of the CBFRS. These funds must support more effective and comprehensive child abuse prevention activities and family support services that will enhance the lives and ensure the safety and well-being of migrant and Native American children and their families.

The purpose of the CBFRS program is to support State efforts to: (1) Develop, operate, expand, and enhance a network of community-based, prevention-focused, family resource and support programs that coordinate resources among a range of existing public and private organizations, and (2) foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect.

Evaluation Criteria: (a) Objectives and Need for Assistance (15 points). The application identifies the training and technical assistance objectives of the project which address: The plan of the tribe, tribal organization or migrant program submitting the application to create linkages with the Statewide network of community-based, prevention-focused, family resource and support programs; and/or the provision of direct services that will increase the availability of child abuse prevention activities and family support services for the children and families served by the applicant agency. Objectives address each of the Project Design requirements of this priority area as described below. The applicant describes the need for providing family resource and support services, and demonstrates an understanding of the goals of the legislative mandate.

(b) Approach (35 points). The application outlines a workable plan of action which relates to the stated objectives and scope of the project, reflects the intent of the legislation, and which:

—Details how the proposed work will be accomplished including a discussion of factors that might accelerate or decelerate the work;
—Lists the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates;
—Describes any unusual features of the project, such as design or technological innovations or reductions in cost or time;
—Provides a method to promote the applicant agency's communication and coordination with other State and community agencies, that will ensure maximum utilization of a full continuum of community-based family resource and support programs, and ensure ease of access for the children, families, and professional staff served by the applicant agency.
—Provides a plan for assisting the State network of CBFRS lead agencies to improve their cultural competence, including promoting the ability of all participating agencies to serve all families effectively, make culturally appropriate placements, recruit and employ minority staff, deliver culturally relevant support services, and develop strategies to improve outcomes for minority families and children.

(c) Results or Benefits Expected (30 points). The application identifies the results, benefits, and level of customer satisfaction to be derived by the applicant agency's State and local constituents, and procedures to measure or evaluate each; the extent to which the results and benefits are consistent with the stated objectives; the potential impact of the results on agency policy and practice; and the extent to which the project costs are reasonable in view of the expected results.

(d) Evaluation (10 points). The application provides an evaluation plan which:

—Includes the methods and criteria to be used to evaluate the results and benefits of the project in terms of its stated objectives;
—Provides either a process or outcome evaluation;
—States goals and objectives in specific measurable form to document change, improvement, or effectiveness
—Identifies the kinds of data to be collected.

(e) Staff and Position Data (10 points). The application identifies the educational and professional background of the project director and key project staff to demonstrate the applicant's ability to administer and implement the project effectively and efficiently. The role of the author(s) of the proposal, including ongoing involvement in the implementation and/or administrative structure is explicitly identified.

(f) Organization Profiles (10 points). The application identifies the experience of the organization which most clearly demonstrates the applicant's ability to administer and implement the project effectively and efficiently; and provides documentation of the applicant agency's experience in:

(1) Provide direct services and coordinate with existing services that will prevent the occurrence or reoccurrence of child abuse and neglect; (2) provide direct or referral services that will support the safety and well-being of families; and (3) recruit, assign, and deploy staff with appropriate experience in the delivery of such services.

Application Guidelines, Forms and Assurances: To obtain a complete application package (including application guidelines, forms, and assurances) contact the National Clearinghouse on Child Abuse and Neglect Information at (800) 394–3366 or <nccanch@calib.com>. This application package consists of three parts. Part I provides information on the Children's Bureau and its Office on Child Abuse and Neglect and general information on the application procedures. Part II describes the review process, details regarding requirements for the grant applications, the criteria for the review and evaluation of applications, and the programmatic priorities for which applications are being solicited. Part III provides information and instructions for the development and submission of applications. The forms to be used for submitting an application are included in the application package. Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center Technical Assistance Team at (800) 351–2293 is available to answer questions regarding application requirements and to refer you to the contact person in the Children's Bureau for programmatic questions.

Dated: March 23, 1998.

James Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–8559 Filed 3–31–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0184]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of completely hydrolyzed copolymer of acrylonitrile and trivinylcyclohexane ion exchange resin for use in treating potable water and aqueous, acidic, and alcoholic foods.

FOR FURTHER INFORMATION CONTACT: Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3189.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4588) has been filed by Rohm and Haas Co., 5000 Richmond St., Philadelphia, PA 19137. The petition proposes to amend the food additive regulations in § 173.25(a) (21 CFR 173.25(a)) to provide for the safe use of completely hydrolyzed copolymer of acrylonitrile and trivinylcyclohexane ion exchange resin for use in treating potable water and aqueous, acidic, and alcoholic foods.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 11, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–8512 Filed 3–31–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0188]

Guidance to Industry and CDRH for PMAs and PMA Supplements: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance to Industry and CDRH for PMAs and PMA Supplements: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review'' (the CDRH draft guidance). The FDA Modernization Act of 1997 (FDAMA) requires the agency to issue final guidance to clarify circumstances in which published matter may be the basis for approval of a supplemental application, specify data requirements that will avoid duplication of previously submitted data by recognizing the availability of data previously submitted in support of an original application, and define supplemental applications that are eligible for priority review. This document is being issued as a draft guidance.

DATES: Written comments on the CDRH draft guidance must be received by May 1, 1998. Comments will be incorporated in a final guidance that is expected to be issued on May 20, 1998.

ADDRESSES: Submit written requests for single copies of the CDRH draft guidance entitled ''Guidance to Industry and CDRH for PMAs and PMA Supplements: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the CDRH draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. See the SUPPLEMENTARY INFORMATION section for electronic access to the CDRH draft guidance.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403(b) of FDAMA (Pub. L.105–115) provides that no later than 180 days after the date of enactment, the Secretary shall issue final guidance to clarify the requirements for, and facilitate the submission of data to support the approval of supplemental applications for articles approved under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) or section 351 of the Public Health Service Act (42 U.S.C. 262). This provision of FDAMA requires the guidance to:

Clarify circumstances in which published matter may be the basis for approval of a supplemental application, specify data requirements that will avoid duplication of previously submitted data by recognizing the availability of data previously submitted in support of an original application, and define supplemental applications that are eligible for priority review.

The Center for Devices and Radiological Health (CDRH) draft guidance being issued at this time includes CDRH specific information as well as a copy of a draft guidance developed through a joint effort between the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). The CDER/CBER draft guidance discusses the type of clinical evidence to support marketing applications for human drugs and biological products. Availability of the CDER/CBER draft guidance for comment was announced in the **Federal Register** of March 21, 1997 (62 FR 13650). The CDER/CBER draft guidance also explains those Centers' thinking on the use of literature to support effectiveness claims for drug and biological products.

Although the CDER/CBER draft guidance document does not address device issues directly, CDRH believes that the CDER/CBER draft guidance is broadly applicable to premarket approval applications (PMAs) and PMA supplements. In particular, the discussion of the use of published data to support approvals of supplements to approved products is consistent with the policies and regulations CDRH applies to its review of PMA supplements. The device industry should note that the examples provided in the attached CDER/CBER draft guidance were not developed with medical devices in mind and may not all be relevant to the evaluation of medical devices. CDRH has already issued guidance similar to the CDER/CBER draft guidance with respect to the design and analysis of clinical trials intended to support PMAs. That CDRH guidance also applies to the design and analysis of clinical trials submitted to support PMA supplements and is available on the internet at http://www.fda.gov/cdrh/manual/pmamanul.pdf.

CDRH recognizes that there are important differences between medical devices and drugs or biologics and differences in the legal standards for their approval. The CDRH draft guidance addresses those differences and includes explanation of the factors that go into the PMA review process. That discussion provides additional guidance on CDRH's policies and regulations intended to avoid duplication of previously submitted data. It also addresses the use of published literature to support PMAs and PMA supplements for marketing approval. The CDRH draft guidance refers readers to the Center's guidance on priority review and clarifies that it is applicable to determine which PMA supplements are eligible for priority review.

FDA anticipates that the final guidance to be issued by the agency on or before May 20, 1998, will apply to all products subject to premarket approval requirements, and will reflect and incorporate the comments received on the drug, biologic, and device sections.

II. Significance of Guidance

This guidance document represents the agency's current thinking on Guidance to Industry and CDRH for PMAs and PMA Supplements: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGPs), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGPs. Interested persons may, on or before May 1, 1998, submit written comments regarding this draft guidance.

III. Electronic Access

In order to receive the Guidance to Industry and CDRH for PMAs and PMA Supplements: Use of Published Literature, Use of Previously Submitted Materials, and Priority Review via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (620) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the World Wide Web for easy access to information text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH home page includes ''Guidance to Industry and CDRH for PMAs and PMA Supplements: Use of Published Literature, Recognition of Previously Submitted Materials, and Priority Review'', device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT-100 Compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1:FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS Topics Page, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH FOR GENERAL INFORMATION, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before May 1, 1998, submit to the Dockets Management Branch (address above) written comments regarding the CDRH draft guidance. Comments regarding the CDER/CBER draft guidance may be submitted, however, such comments must be limited to the guidance as it applies to PMAs and PMA supplementals. Such comments will be considered when determining whether to amend the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the CDRH draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–8568 Filed 3–27–98; 3:35 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–01]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 1, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9152, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact person, Alan Stailey, telephone number 202–708–0317 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Counseling Program and Recordkeeping Requirements.

OMB Control Number, if applicable: 2502–0261.

Description of the need for the information and proposed use:

Agency form numbers, if applicable: Section 106 of the Housing and Community Development Act of 1974, authorizes HUD to approve organizations with knowledge and experience in housing counseling services to renters, first-time homebuyers and homeowners experiencing financial difficulty. HUD recruits and approves community-based, non-profit organizations, national, regional and multi-state organizations, and state housing and finance agencies for the delivery of housing counseling services.

Members of affected public: Housing Counseling Grant Applicants.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needs to prepare the information collection is 2 hours for HUD–9900A, 8 hours for HUD–9900B, 2 hours for HUD–9900C, 1.17 hours for HUD–9902, and .25 for HUD–9921, the number of respondents is 1,241, frequency of response is annually, and the hours of response 13.42.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 26, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 98–8488 Filed 3–31–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4355–N–01]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of Lead Hazard Control.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 1, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ruth Wright, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Matthew Ammon at (202) 755–1785, ext. 158 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Lead Hazard Control Grant Program Data Collection for Rounds Two and Three Grantees.

OMB Control Number, if applicable: 2539–0008.

Description of the need for the information and proposed use:

This data collection is designed to provide timely information to HUD regarding the implementation progress of the grantees on carrying out the Lead-Based Paint Hazard Control Grant Program. The information collection will also be used to provide Congress with status reports as required by Title X of the Housing and Community Development Act of 1992.

Agency form numbers, if applicable: None.

Members of affected public: State and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of

respondents, frequency of response, and hours of response: Number of respondents=51; Frequency of response=4; Hours of response=45; Total Burden Hours=9,075.

Status of the proposed information collection: Reinstatement.

ADDITIONAL INFORMATION: The obligation to response to this information collection is voluntary. Therefore, we expect the actual total burden hours to be substantially less than the estimated total burden hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 25, 1998.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–8489 Filed 3–31–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–435–N–02]

Announcement of OMB Approval Number

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of proposed information collection; announcement of the Office of Management and Budget (OMB) approval number.

SUMMARY: The purpose of this document is to announce the OMB approval number for the collection and analysis of data on crime in a Chicago public housing development and the adjacent neighborhood.

FOR FURTHER INFORMATION CONTACT: Dr. Hal Holzman, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Room 8140, (202) 708–3700. A telecommunications device for the hearing impaired (TTY) is available at (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On October 3, 1997 (62 FR 51878), the Department published in the **Federal Register** a notice of proposed data collection on crime in a public housing development and the adjacent neighborhood. The document, entitled ''Notice of Proposed Information Collection for Public Comment,'' indicated that information collection requirements in the notice had been submitted to the Office of Management and Budget for review and approval under Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The proposal also listed the title of the proposal, description of the need for the information and the proposed use.

The present document provides notice of the OMB approval number. Accordingly, the control number approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (U.S.C. 3501–3520) for the Notice of Proposed Information Collection for Public Comment is 2528–0191. This approval number expires on June 30, 1999. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: March 23, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for the Office of Policy Development.

[FR Doc. 98–8490 Filed 3–31–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Request Information Collection Authority.

SUMMARY: The collection of information described below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements and explanatory material may be obtained by contacting the Services' Information Collection Clearance Officer at the address or phone number listed below.

DATES: Comments must be submitted on or before June 1, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW, Washington, DC 20240; Telephone 703/358–1943.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, Arlington, Virginia at 703/358–1718.

SUPPLEMENTARY INFORMATION: The Service proposes to submit the following information collection clearance requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972 authorizes the Service to allow the incidental, unintentional take of small numbers of marine mammals during a specified activity (other than commercial fishing) in a specified geographical region. Prior to allowing these takes, the Service must find that the total of such taking will have a negligible impact on the species or stocks, and will not have an unmitigable adverse impact on the species or stocks for subsistence uses by Alaskan Natives.

The information proposed to be collected by the Service will be used to evaluate applications for specific incidental take regulations to determine whether such regulations, and subsequent Letters of Authorization (LOA), should be issued; the information is needed to establish the scope of specific incidental take regulations. The information is also required to evaluate the impact of activities on the species or stocks of the marine mammals and on their availability for subsistence uses by Alaskan Natives. It will ensure that all available means for minimizing the incidental take associated with a specific activity are considered by applicants.

The Service estimates that the burden associated with this request will be a total of 1,100 hours for the full 3-year period of OMB authorization. Two-hundred hours will be required to complete the initial request for specific regulations. For each LOA expected to be requested and issued subsequent to issuance of specific regulations, the Service estimates that 20 hours will be invested: 8 hours will be required to complete each request for an LOA, 4 hours will be required for monitoring activities, and 8 hours will be required to complete each monitoring report. The Service estimates that five companies will be requesting LOAs and submitting

monitoring reports annually for each of three sites in the region covered by the specific regulations.

Title: Marine Mammals; Incidental Take During Specified Activities.

Bureau form number: None.

Frequency of collection: Biannually.

Description of respondents: Oil and gas industry companies.

Number of respondents: 5 for each of 3 active sites per year.

Estimated completion time: For the initial year only, a 200 hour application burden in estimated. For the initial year and annually thereafter, 8 hours per LOA, 4 hours for monitoring, and 8 hours per monitoring report are estimated for each of 5 companies for each of 3 active sites (20 hours × 5 companies × 3 sites).

Burden estimate: 200 hours (only in initial year for application).

300 hours (for initial year and annually thereafter).

Dated: March 24, 1998.

Gary Edwards,

Assistant Director—Fisheries.

[FR Doc. 98–8470 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Request Information Collection Authority.

SUMMARY: The collection of information described below will be submitted to OMB for renewal of approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms, and explanatory material may be obtained by contacting the U.S. Fish and Wildlife Service's (Service) Information Collection Clearance Officer at the address or phone number listed below.

DATES: Comments must be submitted on or before June 1, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW, Washington, DC 20240; Telephone 703/358–1943.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, U.S. Fish and Wildlife Service, Division of Fish and Wildlife Management Assistance, Arlington, Virginia, at 703/358–1718, or Wells Stephensen, Office of Marine Mammals Management, Anchorage, Alaska, 907/786–3815.

SUPPLEMENTARY INFORMATION: The Service proposes to submit the following information collection clearance requirements to OMB for review and renewal of approval under the Paperwork Reduction Act of 1995, Public Law 104–13. This information collection requirement is currently approved through August 1998 and assigned OMB clearance number 1018–0066. Comments are invited on.

(1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

As authorized by Section 109(I) of the Marine Mammal Protection Act of 1972, as amended (Act) (16 U.S.C. 1361–1407), the Service in October 1988 implemented formal Marking, Tagging, and Reporting Regulations in 50 CFR 18.23 for Alaskan Natives harvesting polar bear, sea otter, and Pacific walrus. Under Section 101(b) of the Act, Alaskan Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest these species for subsistence or handcraft purposes. Section 109(I) of the Act authorizes the Service, acting on behalf of the Secretary of the Interior, to prescribe marking, tagging, and reporting regulations applicable to this Native subsistence and handicraft take.

On June 28, 1988, the Service published, under authority of Section 109(I) of the Act, a final rule in the **Federal Register** that added paragraph (f) to regulations at 50 CFR 18.23 that enabled the Service to gather data on the Native subsistence and handicraft harvest and biology of polar bear, sea otter, and Pacific walrus in order to determine what effect such take is having on these populations. It also provided the Service with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in Section 101(b) of the Act.

The information collected by the Service from Alaskan Natives is used to improve the Service's decision-making ability by substantially expanding the quality and quantity of harvest and biological data upon which future management decisions can be based. It provides the Service with the ability to make inferences about the condition and general health of these populations and to consider the importance and impacts to these populations from such processes as development activities and habitat degradation. Without authority to collect this harvest information, the Service's ability to measure the take of polar bear, sea otter and walrus is inadequate. Mandatory marking, tagging, and reporting is considered essential to improve the quality and quantity of harvest and biological data upon which future management decisions will be based. It allows the Service to make rational, knowledgeable decisions regarding the Native harvest, habitat degradation, and the effects of oil and gas exploration, development and production planned or underway for areas within the range of these species.

The Service estimates that the annual burden associated with this request will be 500 hours for each year of the 3-year period of OMB authorization. This estimated burden was calculated based on previous experience suggesting that Alaskan Natives annually will take about 2,000 polar bears, sea otters, and walrus for subsistence and handicraft purposes, and that 15 minutes will be needed to provide the required information for each animal taken.

Title: Marine Mammal Marking, Tagging and Reporting Program.

Bureau form numbers: R7–50, R7–51 and R7–52.

Frequency of collection: Occasional.

Description of respondents: Individuals and households.

Number of respondents: Approximately 2,000 per year.

Estimated completion time: 15 minutes per response.

Annual burden hours: 500 hours.

Current OMB Clearance Number: 1018–0066.

Approval Expires: August 31, 1998.

Dated: March 27, 1998.

Rowan Gould,

Acting Assistant Director—Fisheries.

[FR Doc. 98–8523 Filed 3–31–98; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Updated Recovery Plan for the Northeastern Population of the Roseate Tern (Sterna dougallii dougallii) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability population of the roseate tern (*Sterna dougallii dougallii*). The roseate tern is a worldwide species that breeds in two discrete areas in the Western Hemisphere. One of those areas is the northeast where the species breeds on islands along the Atlantic Coast of the United States from New York to Maine and northward into adjacent portions of Canada. This population was listed as an endangered species in November 1987, and the initial recovery plan was completed in March 1989. This species was listed due to its rarity and population decline, which lead to a restricted breeding range with most roseates nesting on just a few islands. The primary threat to the roseate tern is considered to be loss of nesting sites and predation. Additional factors that can effect nesting productivity and overall population status include food availability near the colonies and storm events. The recovery objective is to reclassify the roseate tern to threatened status. The Service solicits review and comment from the public on this draft Plan update.

DATES: Comments on the draft Recovery Plan must be received May 1, 1998 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Northeast Region Endangered Species Program, 300 Westgate Center Drive, Hadley, Massachusetts 01035, telephone (413) 253–8628. Comments should be sent to Michael J. Bartlett, Field Supervisor, New England Field Office, 22 Bridge Street, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Michael Amaral (see above Address for New England Field Office, telephone 603/225–1411.)

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be providing during the Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new, revised or, in this case, updated Recovery Plan. The Service and other federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Roseate Tern (*Sterna dougallii dougallii*) Updated Recovery Plan. Currently, 85 percent of the birds are concentrated in three colonies, two in Massachusetts and one in New York.

This temperate zone tern prefers to nest under or adjacent to objects that provide cover or shelter. These objects include clumps of vegetation, rocks, driftwood, or man-made objects. Roseate terns are exclusively marine, and usually breed on small islands, but occasionally on sand dunes at the end(s) of barrier beaches.

Since the roseate tern was listed in 1987, the sites that support the largest colonies of terns, and most of those that support medium-sized colonies, are owned by government agencies or private conservation organizations and are managed to protect the terns. Though most of the terrestrial habitat that the roseate tern occupies during the nesting season is ''protected'', threats such as predation, human disturbance, storm events, and habitat loss to erosion persist at most colonies.

Due to the continued vulnerability of this population, delisting of the roseate tern is inadvisable at this time. The immediate recovery objective for this species is to reclassify the species to threatened status. To achieve this objective, three criteria need to be met: (1) increase the northeast nesting population (U.S. and Canada) to 5,000 breeding pairs; (2) the 5,000 pairs occur among 6 or more large colonies with high productivity within the current geographic distribution; and (3) institute long-term agreements to assure protection and management sufficient to maintain the population targets and average productivity in each breeding colony. Delisting of the population will be considered if the nesting population reaches the historic, 1930's level of 8,500 pairs. The preceding recovery objectives are the same as those in the 1989 Recovery Plan.

The draft Recovery Plan update is being submitted for agency and public review. After consideration of comments received during the review period, the revised Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for the action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 20, 1998.

Adam O'Hara,

Acting Regional Director, Region 5.

[FR Doc. 98–8524 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–55–M

Department of the Interior

Fish and Wildlife Service

Application for Approval of Tin Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has reviewed the International Tin Research Institute, Ltd.'s (ITRI) application for approval of tin shot as nontoxic for waterfowl hunting in the United States. The Service has found that the Tier 1 test results are inconclusive and Tier 2 testing is required before further consideration.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. Currently, only bismuth-tin and steel shot are approved by the Service as

nontoxic. Tungsten-iron shot received temporary conditional approval for the 1997–98 hunting season. The Service believes approval for other suitable candidate shot materials as nontoxic is feasible.

On February 10, 1998, the Service announced its intention to review ITRI's Tier 1 information for approval of pure tin shot as nontoxic pursuant to 50 CFR 20.134 (recently amended—see 62 FR 63608, December 1, 1997). The Service has determined that the Tier 1 test results are inconclusive. The Service requires that the Tier 2 test be completed before nontoxic approval of the tin shot can be considered. For a complete review of the tin shot application and review process, refer to the Supplementary Information Section of the February 10, 1998, **Federal Register** (63 FR 6766).

ITRI submitted a Tier 2 test protocol to conduct an *in vitro* test to determine the erosion rate of the candidate shot and an acute toxicity test to determine the short-term effects of the candidate shot on game-farm mallards (*Anas platyrhynchus*) using commercially available duck food. The test protocol has been reviewed and approved by the Service, with technical assistance provided by the U.S. Geological Survey's Biological Resources Division. The general outline of the *in vitro* and acute toxicity tests given below is not a complete description of the testing protocol, but gives the basic outline of the test procedures being conducted.

In vitro test procedures:

Five #4 each of tin, steel, and lead shot pellets were separately placed in 15 100 ml screw-top pyrex bottles. These bottles were filled with 100 ml of a sodium chloride-pepsin (20 g/l) solution. The samples were maintained at 42°C and continuously stirred using a magnetic stirrer for 14 days. Each day 1 ml of solution was sampled and analyzed for metal content. Tin solutions were analyzed using an ICP with dilutions of the samples at 10 and 20 times in 10 percent hydrochloric acid. The lead solutions were analyzed using flame atomic absorption spectroscopy with dilutions at 10 and 50 times in 5 percent nitric acid. Steel solutions were analyzed using flame atomic absorption spectroscopy with dilutions at 10 and 50 times in 10 percent hydrochloric acid.

In vitro results:

The average increase of metal concentration in solution per day was calculated to be 116 ppm for lead, 58.1 ppm for iron (from the steel shot), and 26.7 ppm for tin. Extrapolation of these dissolution rates shows that complete dissolution of one #4 tin shot takes twice the time for dissolution of steel shot and over three times for dissolution of lead shot under conditions simulating a waterfowl gizzard.

Acute toxicity test procedures:

Two sets of eight pairs of mallards will be dosed with the candidate shot. One group will be fed a balanced diet, while the other is fed a nutritionally deficient (whole corn) diet. Another eight pairs will be dosed with steel shot, while three pairs each will be sham- and lead-dosed. All mallards will be housed outdoors during the winter at low temperatures. All groups, except the sham-dosed group, will be dosed with 8 #4 pellets of the appropriate shot type. Birds will be observed for 30 days for toxicological responses, shot retention will be monitored radiographically, and hematological and biochemical parameters will be monitored during the study. Selected tissues (liver, kidney, femur, and gonads) will be collected for histopathological evaluation and residue analysis.

If the Tier 2 data result in a preliminary determination that the candidate material does not impose a significant danger to migratory birds, other wildlife, and their habitats, the Service will propose to approve this shot based on the toxicological report and toxicity studies and explain why Tier 3 testing is unnecessary. If the results are not conclusive or as a result of the public comment period, the Service determines that the information does not establish that the shot does not impose a significant danger to migratory birds, other wildlife, and their habitats, Tier 3 testing will be required and a *Notice of Review* published in the **Federal Register**.

Authorship

The primary author of this notice of application is Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management.

Dated: March 19, 1998.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–8552 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–55–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet on April 24, 1998, from 8:00 a.m. to 5:00 p.m. local time.

Submit written comments no later than close of business April 30, 1998.

ADDRESSES: The advisory board will meet in The Virginian Suites, 1500 Arlington Boulevard, Arlington, Virginia.

Send written comments to Bureau of Land Management, WO–610, Mail Stop 406 LS, 1849 C Street, NW, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Mary Knapp, Wild Horse and Burro Public Affairs Specialist, (202) 452–5176. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern Daylight Time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Friday, April 24, 1998

—Welcome by BLM Director Pat Shea;
—Program Update;
—Breakout into small groups to address the following topics: horses on the range, horses off the range, science, and, burros;
—Presentation of comments by members of the public.

The meeting is open to the public. The advisory board will make detailed

minutes of the meeting. BLM will make the minutes available to interested parties who contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Under the Federal advisory committee management regulations (41 CFR 101–6.1015(b)), BLM is required to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the advisory board on April 24, 1998 at the appropriate point in the agenda, which is anticipated to occur at 3:30 p.m. local time. Persons wishing to make statements should register with BLM by noon on April 24, 1998, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments where feasible. BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be released in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to: mknapp@wo.blm.gov. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: March 26, 1998.

Pat Shea,

Director, Bureau of Land Management.

[FR Doc. 98–8519 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–4210–05; UTU–72937]

Wayne County, Utah; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands in Wayne County, Utah have been examined and found suitable for classification for conveyance to Wayne County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Wayne County proposes to use the lands for a Class IV landfill:

T.28 S., R.11 E. Sec. 4: W½NE¼

Salt Lake Meridian containing 80 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available at the office of Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Publication of this notice constitutes notice to the grazing permittees of the Hanksville Allotment that their grazing leases may be directly affected by this action.

Specifically, the permitted Animal Unit Months (AUMs) will not be reduced because of this sale, but the land (80 acres) will be excluded from the allotment effective upon issuance of the patent.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Richfield District Office, 150 East 900 North, Richfield, Utah 84701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper

administrative procedures in reaching the decision, or any other factor not related to the suitability of the land for a landfill. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective June 1, 1998.

Dated: March 23, 1998.

Jerry Goodman,

District Manager.

[FR Doc. 98–8522 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

March 23, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., March 23, 1998. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, T. 2 N., R. 79 W., Sixth Principal Meridian, Group 1118, Colorado, was accepted February 19, 1998.

This survey was requested by the USDA Forest Service for administrative purposes.

The plat representing the entire record of the dependent resurvey of portions of the subdivisional lines of section 10, a portion of the subdivision of section 10, and the survey of Parcel A. T. 2 S. R. 1 E., Ute Meridian, Group 1182, Colorado, was accepted February 9, 1998.

The plat representing the dependent resurvey of a portion of the First Guide Meridian West along the west boundary and portions of the east and south boundaries and subdivisional lines, and the subdivision of certain sections, T. 47 N., R. 8 W., New Mexico Principal Meridian, Group 1132, Colorado, was accepted February 11, 1998.

The plat representing the dependent resurvey of a portion of the east boundary, the corrective dependent resurvey of certain subdivisional lines, and dependent resurvey of a portion of the subdivisional lines, and the corrective survey of the subdivision of section 24, and the subdivision of sections 11 and 12, T. 13 S., R. 102 W., Sixth Principal Meridian, Group 1081, Colorado, was accepted February 11, 1998.

This supplemental plat amends the dependent resurvey plat accepted October 27, 1997, where the acreage for lot 21 in the NE1/4 of section 9, T. 4 S., R. 78 W., Sixth Principal Meridian, Colorado, was inadvertently omitted. It was accepted February 11, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 18, T. 5 N., R. 96. W., Sixth Principal Meridian, Group 1133, Colorado, was accepted February 19, 1998.

The plat representing the dependent resurvey of portions of the Twelfth Guide Meridian West, (east boundary), the subdivisional lines, certain claim lines, and the subdivision of sections 12 and 13, T. 5 N., R 97 W., Sixth Principal Meridian, Group 1133, Colorado, was accepted February 19, 1998.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and the subdivision of section 2, T. 6 S., R. 90 W., Sixth Principal Meridian, Group 1124, Colorado, was accepted February 19, 1998.

The plat representing the corrective dependent resurvey of a portion of the south boundary and subdivisional lines and a corrective survey of a portion of the subdivision of sections 33 and 34, T. 1 S., R. 84 W., Sixth Principal Meridian, Group 1152, Colorado, was accepted February 19, 1998.

The plat representing the dependent resurvey of a portion of subdivisional lines with a subdivision of section 9, T. 46 N., R. 4 W., New Mexico Principal Meridian, Group 1056, Colorado, was accepted February 23, 1998.

This supplemental plat, showing lot 1 in the NW1/4 section 9., T. 10 S., R. 86 W., Sixth Principal Meridian, Colorado, was accepted March 4, 1998.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 23, T. 2 N., R. 76 W., Sixth Principal Meridian, Group 1145, Colorado, was accepted March 6, 1998.

The plat representing the dependent resurvey of a portion of the north boundary and the subdivisional lines and the subdivision of section 5., T. 15 S., R. 102 W., Sixth Principal Meridian, Group 1014, Colorado, was accepted March 6, 1998.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 12, T. 1 S., R. 95 W., Sixth Principal Meridian, Group 1155, Colorado, was accepted March 6, 1998.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines and the subdivision of certain sections, T. 3 N., R. 103 W., Sixth Principal Meridian, Group 1141, Colorado, was accepted March 6, 1998.

These surveys were requested by BLM for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 98–8520 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection of information (OMB Control Number 1010–0071).

SUMMARY: As required by the Paperwork Reduction Act of 1995 (Act), the Department of the Interior has submitted the collection of information discussed below to the Office of Management and Budget (OMB) for approval. The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by May 1, 1998.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0071), 725 17th Street, NW, Washington, D.C. 20503. Send a copy of your comments to the Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the supporting statement and collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 203, Relief or Reduction in Royalty Rates.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended by the

Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior the authority to reduce or eliminate royalty or any net profit share set forth in Outer Continental Shelf oil and gas leases to promote increased production. The MMS final rule established the terms and conditions for granting reductions in royalty rates under the OCS Lands Act and royalty suspension volumes under the DWRRA for certain leases in existence before November 28, 1995. It also defines the information required for a complete application as required by 43 U.S.C. 1337(a)(3)(C). The final rule was published in the **Federal Register** on January 16, 1998 (63 FR 2605). The preamble stated that the new information collection requirement in § 203.61 would not become effective until approved by OMB. The preamble provided the required 60-day comment period.

MMS will use the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the Government that they might not otherwise receive. An application for royalty relief must contain sufficient financial, economic, reservoir, geologic and geophysical, production, and engineering data and information for MMS to determine whether relief should be granted according to applicable law. The application also must be sufficient to determine whether the requested relief will result in an ultimate increase in resource recovery and receipts to the Federal Treasury and provide for reasonable returns on project investments. The applicant's requirement to respond is related only to a request to obtain royalty relief. The applicant has no obligation to make such a request. The MMS will protect information considered proprietary under applicable law and regulations at 30 CFR 203.63(b) and 30 CFR part 250.

Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees making an estimated 44 applications per year.

Frequency: On occasion.

Reporting and Recordkeeping Hour Burden: See chart below. Average 333 hours per response for a total estimated burden of 14,640 hours.

Reporting and Recordkeeping Cost Burden: See chart below.

(a) Application processing cost: average $22,000 per application for a total estimated burden of $618,250.

(b) Some applications will require a report prepared by an independent certified public accountant: average $45,000 per application for an estimated burden of $1,215,000.

BURDEN BREAKDOWN CHART

Requirement 30 CFR part 203	Application/audit fees		
	Responses per year	Hours per response	Annual burden
OCSLA Reporting			
Application—leases that generate earnings that can't sustain continued production (end-of-life lease).	6	200	1,200
	Application: 6 × $8,000 = $48,000 Audit: 1 × $12,500 = $12,500		
Application—NRS expansion project	0	0	0
§ 203.55 Renounce relief arrangement	Seldom, if ever will be used; burden minimal to prepare letter		0
§ 203.81 Required reports	Burden included with applications		0
Subtotal OCS Lands Act	6	N/A	1,200
	Processing Fees $60,500		
DWRRA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 and are producing (deep water expansion project).	3	600	1,800
	Application: 3 × $19,500 = $58,500 Audit: 1 × $18,750 = $18,750		
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 and have not produced (pre-act deep water leases).	8	1,000	8,000
	Application: 8 × $34,000 = $272,000 Audit: 2 × $37,500 = 75,000		
Application—short form to add or assign pre-act lease	7	40	280
	Application: 7 × $1,000 = $7,000 No Audit:		
Application—preview assessment	2	900	1,800
	Application: 2 × $28,500 = $57,000 No Audit:		
Redetermination	2	500	1,000
	Application: 2 × $16,000 = $32,000 Audit: 1 × $37,500 = $37,500		
§ 203.70 Submit fabricator's confirmation report	8	20	160
§ 203.70 Submit post-production development report	8	50	400
§ 203.77 Renounce relief arrangement	Seldom, if ever will be used; burden minimal to prepare letter		0
§ 203.79 Appeal MMS decisions	Exempt as defined in 5 CFR 1320.3(h)(9)		0
§ 203.81 Required reports	Burden included with applications		0
Subtotal DWRRA	38	N/A	13,440

BURDEN BREAKDOWN CHART—Continued

Requirement 30 CFR part 203	Application/audit fees		
	Responses per year	Hours per response	Annual burden
	Processing Fees $557,750		
Total Annual Reporting Burden	44 Responses	N/A	14,640 Hours
	Processing Fees $618,250		
Recordkeeping			
§ 203.91 Retain supporting cost records for post-production development and fabrication reports.	8 Record keepers	8	64 Hours
Total Annual Recordkeeping Burden.	Respondents would retain records as usual and customary business practice; minimal burden to make them available at MMS request.		

Comments

Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . . .'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 1, 1998.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 25, 1998.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–8485 Filed 3–31–98; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–392]

Advice Concerning APEC Sectoral Trade Liberalization

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: March 25, 1998.

SUMMARY: Following receipt of a request on March 18, 1998, from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–392, Advice Concerning APEC Sectoral Trade Liberalization, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Industry-specific information may be obtained from Karen Laney-Cummings (202–205–3443) or James Lukes (202–205–3426), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). News media should contact Peg O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

USTR asked the Commission to provide advice concerning trade liberalization among APEC countries in nine sectors including: chemicals, environmental goods and services, fish and fish products, forest products, gems and jewelry, medical equipment and instruments, toys, energy equipment and services, and telecommunications equipment. A list of Harmonized Tariff System (HTS) numbers that comprise the goods for most sectors is attached; the list for environmental goods and services is illustrative. The report will include (1) profiles of the above industry sectors (including a description of U.S. and foreign sectors and their competitive positions); (2) an assessment of patterns of U.S. sector imports and exports to APEC trading partners and other trading partners; (3) summaries of U.S. and foreign tariff rates and reported nontariff barriers affecting the sectors; and (4) information about increased market access opportunities resulting from liberalization. As requested, the Commission plans to transmit its report to USTR by June 16, 1998. USTR has indicated portions of the report will be classified as ''confidential'' and will also be regarded as containing predecisional advice and be subject to the deliberative process privilege.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 21, 1998. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, no later than 5:15 p.m., April 15, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 15, 1998; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 28, 1998. In the event that, as of the close of business on April 15, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-

participant may call the Secretary to the Commission (202–205–1816) after April 15, 1998 to determine whether the hearing will be held.

Written Submissions: In lieu of, or in addition to, participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on April 28, 1998. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects:

APEC, trade liberalization, tariff rates, nontariff barriers, market access opportunities, chemicals, environmental goods and services, fish and fish products, forest products, gems and jewelry, medical equipment and instruments, toys, energy equipment and services, and telecommunications equipment.

By order of the Commission.

Issued: March 26, 1998.

Donna R. Koehnke,

Secretary.

United States International Trade Commission; Washington, DC

(Investigation 332–392)

Advice Concerning APEC Sectoral Trade Liberalization

Sector Coverage for Tariff Data

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Fish and Fish Products

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Forest Products

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4601.20
4601.91
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4602.10
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Gems and Jewelry

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7109.00
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7111.00
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Medical Equipment and Instruments

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3822.00
8419.20
8543.89
8713.10
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8714.20
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Toys

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Telecommunications

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Energy Commodities

HS	Description
2701.11	Anthracite coal, not agglomerated.
2701.12	Bituminous coal, not agglomerated.
2701.19	Coal nesoi, not agglomerated.
2701.20	Briquettes, ovoids, similar solid fuels from coal.
2711.11	Natural gas, liquefied.
2711.12	Propane, liquefied.
2711.13	Butanes, liquefied.
2711.14	Ethylene, propylene, butylene and butadiene liqifi.
2711.19	Petroleum gases etc., liquefied, nesoi.
2711.21	Natural gas, gaseous.
2711.29	Petroleum gases etc., in gaseous state, nesoi.
2716.00	Electrical energy.
ex 2901.10	Synthetic natural gas (methane of 90% purity obtained from sources other than naturally occuring reservoirs of natural gas) .

Energy-Related Equipment

EX	HS 98	6-Digit Description
	7304 10	Line pipe of a kind used for oil or gas pipelines.
	7304 21	Drill pipe of a kind used in drilling for oil and gas.
	7304 29	Casing or tubing of a kind used in drilling for oil and gas.
ex	7304 31	Seamless cold-drawn or cold-rolled tubes, pipes, and hollow profiles, of iron or nonalloy steel, other than of circular cross section, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters.
ex	7304 39	Tubes, pipes, and hollow profiles, seamless, of iron or nonalloy steel, other than cold-drawn or cold-rolled, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters.

EX	HS 98	6-Digit Description
ex	7304 41	Tubes, pipes, and hollow profiles, seamless, of cold-rolled or cold-drawn, of stainless steel other than of high-nickel alloy steel, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, and feedwater heaters.
ex	7304 49	Tubes, pipes, and hollow profiles, seamless, other than cold-rolled or cold-drawn, of stainless steel other than of high-nickel alloy steel, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, and feedwater heaters.
ex	7304 51	Tubes, pipes, and hollow profiles, seamless, of circular cross section, of other alloy steel, cold-rolled or cold-drawn, other than of high-nickel alloy steel, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, and feedwater heaters.
ex	7304 59	Tubes, pipes, and hollow profiles, seamless of iron or steel, of circular cross-section, of other alloy steel, other than cold-rolled or cold-drawn for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, and feedwater heaters.
	7305 11	Line pipe of a kind used for oil and gas pipelines, longitudinally submerged arc welded, having circular cross sections, the external diameter of which exceeds 406.4 mm.
	7305 12	Line pipe of a kind used for oil and gas pipelines, other longitudinally welded, having circular cross sections, the external diameter of which exceeds 406.4 mm.
	7305 19	Line pipe of a kind used for oil and gas pipelines, other than longitudinally welded, having circular cross sections, the external diameter of which exceeds 406.4 mm.
	7305 20	Casing of a kind used in oil or gas drilling, having circular cross sections, the external diameter of which exceeds 406.4 mm.
	7306 10	Line pipe of a kind used for oil or gas pipelines, open seamed, or welded, riveted or similarly closed.
	7306 20	Casing or tubing of a kind used in oil or gas drilling, open seamed, welded, riveted or similarly closed.
ex	7306 30	Tubes, pipes, and hollow profiles, welded, of circular cross section, of iron or nonalloy steel, having a wall thickness of 1.65mm or more, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn.
ex	7306 40	Tubes, pipes, and hollow profiles, welded, of circular cross section, of stainless steel, having a wall thickness of 1.65mm or more, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn.
ex	7306 50	Tubes, pipes, and hollow profiles, welded, of circular cross section, of other alloy steel, nonalloy steel, having a wall thickness of 1.65mm or more, suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn.
ex	7308 20	Towers and lattice masts of iron or steel for oil or gas exploration and extraction and electricity power transmission.
ex	7308 40	Equipment for scaffolding, shuttering, propping or pit-propping for coal and uranium mining.
ex	7308 90	Parts of towers and lattice masts of iron or steel for oil or gas exploration and extraction and electricity power transmission.
ex	7309 00	Reservoirs, tanks, vats, and similar containers, of iron or steel, of a capacity exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment for use with petroleum extraction, production, and refining.
ex	7310 10	Empty steel drums and barrels of a capacity greater than 50 liters for use with petroleum or refined petroleum products.
	7311 00	Containers for compressed or liquefied gas, of iron or steel, for the storage of natural gas.
ex	7312 10	Steel wire cables for the core of aluminum cable-steel reinforced cables (ACSR).
	8207 13	Rock drilling or earth boring tools, and parts thereof, with a working part of cermets.
	8207 19	Rock drilling or earth boring tools, and parts thereof, with a working part other than cermet.
	8401 10	Nuclear reactors.
	8401 20	Machinery and apparatus for isotopic separation, and parts thereof.
	8401 30	Fuel elements (cartridges), non-irradiated, and parts thereof.
	8401 40	Parts of nuclear reactors.
	8402 11	Watertube boilers with a steam production exceeding 45 t per hour.
	8402 12	Watertube boilers with a steam production not exceeding 45 t per hour.
	8402 19	Other vapor generating boilers, including hybrid boilers.
	8402 20	Super-heated water boilers.
	8402 90	Parts of steam or other vapor-generating boilers of heading 8404.
	8403 10	Central heating boilers (other than those of 8402).
	8403 90	Parts of central heating boilers (other than those of 8402).
	8404 10	Auxiliary plant for use with boilers of headings 8402 and 8403.
	8404 20	Condensers for steam and other vapor power units of headings 8402 and 8403.
	8404 90	Parts of auxiliary plant for use with boilers of headings 8402 and 8403.
	8406 81	Steam and other vapor turbines of an output exceeding 40 MW.
ex	8406 82	Steam and other vapor turbines of an output not exceeding 40 MW.
ex	8406 90	Parts of steam and other vapor turbines other than for marine propulsion.
ex	8408 90	Other compression-ignition internal combustion piston engines (diesel or semi-diesel engines) for use in drilling for oil and gas.
ex	8409 99	Parts of other compression-ignition internal combustion piston engines (diesel or semi-diesel engines) for use in drilling for oil and gas.
	8410 11	Hydraulic turbines and water wheels of a power not exceeding 1,000 kWr).
	8410 12	Hydraulic turbines and water wheels of a power exceeding 1,000 kW but not exceeding 10,000 kW.
	8410 13	Hydraulic turbines and water wheels of a power exceeding 10,000 kW.
	8410 90	Parts, including regulators.
ex	8411 11	Turbojets of a thrust not exceeding 25 kN other than for aircraft, marine craft and locomotives.
ex	8411 12	Turbojets of a thrust exceeding 25 kN other than for aircraft, marine craft and locomotives.
ex	8411 21	Turbopropellers of a power not exceeding 1,100 kW other than for aircraft, marine craft and locomotives.
ex	8411 22	Turbopropellers of a power exceeding 1,100 kW other than for aircraft, marine craft and locomotives.
ex	8411 81	Other gas turbines of a power not exceeding 5,000 kW other than for aircraft, marine craft and locomotives.
ex	8411 82	Other gas turbines of a power exceeding 5,000 kW other than for aircraft, marine craft and locomotives.
ex	8411 91	Parts of turbojets and turbopropellers for use other than for aircraft, marine craft and locomotives.
ex	8411 99	Parts of other gas turbines for use other than for aircraft, marine craft and locomotives.

EX	HS 98	6-Digit Description
ex	8413 50	Other reciprocating positive displacement oil well and oil field pumps.
ex	8413 60	Other rotary positive displacement oil well and oil field pumps.
ex	8413 91	Parts of oil well and oil field pumps and pumps used in petroleum refining.
ex	8414 80	Compressors for use in natural gas production and delivery, and for use in power plants.
ex	8414 90	Parts of compressors for use in natural gas production and delivery and in power plants in 8414.80.
	8416 10	Furnace burners for liquid fuel.
	8416 20	Other furnace burners, including combination furnace burners.
	8416 30	Mechanical stokers, including their mechanical grates, mechanical ash dischargers, and similar appliances.
	8416 90	Parts of furnace burners.
ex	8417 80	Other nonelectric industrial or laboratory furnaces and ovens, including incinerators, for waste-to-energy production.
ex	8417 90	Parts of other nonelectric industrial or laboratory furnaces and ovens, including incinerators, for waste-to-energy production.
ex	8419 19	Solar water heaters (hot water).
ex	8419 40	Distilling and rectifying plant for petroleum refining, coal gasification, or biomass distillation.
ex	8419 60	Machinery for liquefying natural gas.
ex	8419 89	Other machinery, plant or equipment for refining petroleum, coal gasification, or fermenting biomass.
ex	8419 90	Parts of solar water heaters (hot water), and of distilling and rectifying plant for petroleum refining, coal gasification, or biomass distillation, machinery for liquefying natural gas, or other machinery, plant or equipment for refining petroleum, coal gasification, or fermenting biomass.
ex	8421 21	Water filtering or purifying machinery for boiler water for power generation.
ex	8421 29	Oil-separation equipment.
ex	8421 39	Gas separation equipment; filtering or purifying machinery and apparatus for use in the production of electricity from nuclear power.
ex	8421 99	Parts of machinery for filtering or purifying boiler water for power generation, oil-separation equipment, and gas separation equipment; filtering or purifying machinery and apparatus for use in the production of electricity from nuclear power.
	8428 31	Other continuous-action elevators and conveyors, for goods or materials, specifically designed for underground use.
	8428 32	Other continuous-action elevators and conveyors, for goods or materials, bucket type.
	8428 33	Other continuous-action elevators and conveyors, for goods or materials, belt type.
	8428 39	Other continuous-action elevators and conveyors, for goods or materials, other.
	8428 50	Mine wagon pushers, locomotive or wagon traversers, wagon tippers and similar railway wagon handling equipment.
	8428 90	Other lifting, handling, loading or unloading machinery of a kind used in charging or discharging furnaces; other lifting, handling, loading or unloading machinery of a kind used for radioactive materials; sidebooms and pipehandlers; loaders, underground mine type; other lifting, handling, loading or unloading machinery for oil and gas field machinery.
	8429 11	Self-propelled bulldozers and angledozers, track laying
	8429 19	Self-propelled bulldozers and angledozers other than track laying.
	8429 20	Self-propelled graders and levelers.
	8429 30	Self-propelled scrapers.
	8429 51	Self-propelled front-end shovel loaders.
	8429 52	Self-propelled machinery with a 360 degree revolving superstructure.
	8429 59	Self-propelled backhoes, shovels, clamshells and draglines and other machinery other than with a 360 degree revolving superstructure.
	8430 10	Pile-drivers and pile-extractors.
	8430 31	Self-propelled coal or rock cutters and tunneling machinery.
	8430 39	Coal or rock cutters and tunneling machinery, not self-propelled.
	8430 41	Self-propelled boring or sinking machinery.
	8430 49	Offshore oil and natural gas drilling and production platforms; other boring or sinking machinery, not self-propelled, for oil well and gas field drilling; other boring or sinking machinery, not self-propelled, other.
ex	8430 50	Self-propelled peat excavators; self-propelled machinery for working earth, nesi.
	8430 62	Scrapers, not self-propelled.
	8430 69	Machinery for working earth, not self-propelled, nesi.
	8431 39	Parts of other lifting, handling, loading or unloading machinery of subheadings 8428.31, 8428.32, 8428.33, 8428.39, 8428.50, and 8428.90.
	8431 41	Buckets, shovels, grabs and grips suitable for use solely or principally with the machinery of headings 8426, 8429, or 8430.
	8431 42	Bulldozer or angledozer blades suitable for use solely or principally with the machinery of heading 8426, 8429 or 8430.
	8431 43	Parts of boring or sinking machinery of 8430.41 or 8430.49.
	8431 49	Parts suitable for use solely or principally with the machinery of heading 8429 or 8430, nesi.
ex	8437 80	Cutters and other machinery for working corn/biomass for biomass energy production.
ex	8437 90	Parts of cutters and other machinery for working com/biomass for biomass energy production.
	8467 11	Rock drills, pneumatic, hand-held rotary type (including combined rotary-percussion).
ex	8467 19	Other tools for working in the hand, hydraulic or with self-contained nonelectric motor, other than pneumatic, designed for use in construction or mining.
ex	8467 92	Parts of pneumatic, hand-held rock drills or hand -held tools, hydraulic or with self-contained nonelectric motor, other than pneumatic, designed for use in construction or mining.
	8474 10	Sorting, screening, separating or washing machines.
	8474 20	Crushing or grinding machines.
	8474 80	Machinery for agglomerating, shaping, or molding soild mineral fuels, ceramic pastes, unhardened cements, plastering materials or other mineral products in powder or paste form.
ex	8474 90	Parts of machines for sorting, screening, separating or washing, crushing or grinding.
ex	8479 89	Oil and gas field wireline and downhole equipment.
ex	8479 90	Parts of oil and gas field wireline and downhole equipment.
ex	8481 10	Pressure-reducing valves for electric power generation, petroleum and natural gas production, petroleum refining, and biomass production.
ex	8481 30	Check valves for electric power generation, petroleum and natural gas production, petroleum refining, and biomass production.

EX	HS 98	6-Digit Description
ex	8481 40	Safety or relief valves for electric power generation, petroleum and natural gas production, petroleum refining, and biomass production.
ex	8481 80	Hand operated valves and other valves for electric power generation, petroleum and natural gas production, petroleum refining, and biomass production.
ex	8481 90	Parts valves for electric power generation, petroleum and natural gas production, petroleum refining, and biomass production.
ex	8501 31	Other electric DC motors, of an output exceeding 74.6 W but not exceeding 735 W.
ex	8501 32	Other electric DC motors of an output exceeding 750 W but not exceeding 75 kW, other than electric motors of a kind used as the primary source of mechanical power for electrically vehicles of subheading 8703.90 and other than for use in civil aircraft.
ex	8501 33	Other electric DC motors of an output exceeding 75 kW but not exceeding 375 kW, other than for use in civil aircraft.
ex	8501 34	Other electric DC motors of an output exceeding 375 kW.
ex	8501 51	Other AC motors, multi-phase, of an output exceeding 74.6 W but not exceeding 735 W.
ex	8501 52	Other AC motors, multi-phase, of an output exceeding 750 W but not exceeding 75 kW, other than for use in civil aircraft.
ex	8501 53	Other AC motors, multi-phase, of an output exceeding 75 kW but under 149.2 kW, or of an output exceeding 150 kW.
	8501 64	AC generators (alternators) of an output exceeding 750 kVA.
	8502 13	Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel) of an output exceeding 375 kVA.
	8502 20	Generating sets with spark-ignition internal combustion piston engines.
	8502 31	Other generating sets, wind-powered
	8502 39	Other generating sets.
ex	8503 00	Parts of generators for generators of subheadings 8501.64, 8502.13, 8502.20, 8502.31, and 8502.39.
	8504 21	Liquid dielectric transformers having a power handling capacity not exceeding 650 kVA for electric power delivery.
	8504 22	Liquid dielectric transformers having a power handling capacity exceeding 650 kVA but not exceeding 10,000 kVA for electric power delivery (electricity).
	8504 23	Liquid dielectric transformers having a power handling capacity exceeding 10,000 kVA.
	8504 33	Other transformers having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA.
	8504 34	Other transformers having a power handling capacity exceeding 500 kVA for electric power delivery.
ex	8504 40	Speed drive controllers for electric motors and other static converters (including rectifiers and rectifying apparatus and inverters), other than for power supplies for automatic data processing machines or units thereof of heading 8471, or telecommunications apparatus.
ex	8504 90	Parts of speed drive controllers for electric motors and other static converters (including rectifiers and rectifying apparatus and inverters), other than for power supplies for automatic data processing machines or units thereof of heading 8471, or telecommunications apparatus.
	8507 20	Other lead-acid batteries, other than of a kind used as the primary source of electrical power for electrically powered vehicles of subheading 8703.90, including 6 V, 12 V, or 36 V.
	8507 40	Nickel-iron storage batteries, other than of a kind used as the primary source of electrical power for electrically powered vehicles of subheading 8703.90.
	8532 25	Electrical capacitors, fixed, variable or adjustable (pre-set), dielectric of paper or plastics, alternating current (AC) service, 1,000 V or greater.
	8535 10	Fuses for a voltage exceeding 1,000 V.
	8535 21	Automatic circuit breakers for a voltage of less than 72.5 kV.
	8535 29	Automatic circuit breakers for a voltage greater than 72.5 kV.
	8535 30	Isolating switches and maek-and-break switches.
ex	8535 90	Motor starters and motor overload protectors.
	8536 10	Fuses, for a voltage not exceeding 1,000 V.
	8536 20	Automatic circuit breakers, for a voltage not exceeding 1,000 V.
	8536 30	Other apparatus for protecting electrical circuits, including motor overload protectors, for a voltage not exceeding 1,000 V.
	8536 41	Relays for a voltage not exceeding 60 V.
	8536 49	Relays for a voltage greater than 60 V, but not exceeding 1,000 V.
	8536 50	Switches for a voltage less than 1,000 volts
	8536 69	Electrical connectors.
	8536 90	Other apparatus, including terminals, boxes.
ex	8537 10	Motor control centers, switchgear assemblies and switchboards, panel boards and distribution boards, and programmable controllers and associated modules.
	8537 20	Boards, panels, consoles, desks, cabinets and other bases, for a voltage exceeding 1,000 V.
	8538 10	Parts of boards, panels, consoles, desks, cabinets and other bases, not equipped with their apparatus, for a voltage exceeding 1,000 V.
	8538 90	Parts suitable for use solely or principally with the apparatus of headings 8535.10, 8535.21, 8535.29, 8535.30, and motor starters and motor overload protectors; of headings 8536.10, 8536.20, 8536.30, 8536.41, 8536.49, 8536.50, and motor control centers, switchgear assemblies and switchboards, panel boards and distribution boards, and programmable controllers and associated modules; of headings 8537.20 and 8538.10.
ex	8541 40	Photovoltaic cells (solar cells), whether or not assembled in modules or made up into panels.
ex	8544 41	Other electric connectors, for a voltage not exceeding 80 V, fitted with connectors, other than of a kind used for telecommunications.
ex	8544 49	Other electric connectors, for a voltage not exceeding 80 V, other than fitted with connectors, other than of a kind used for telecommunications.
ex	8544 51	Other electric connectors, for a voltage exceeding 80 V but not exceeding 1,000 V, other than fitted with modular telephone connectors and other than a kind used for telecommunications.
	8544 60	Other electric conductors, for a voltage exceeding 1,000 V.
	8546 20	Electrical insulators of ceramics, used in high-voltage, low-frequency electrical systems, commonly known as suspension, pin-type or line post insulators.
ex	8547 90	Electrical conduit tubing and joints therefor, of base metal lined with insulating material, for electric power delivery.
	8704 10	Dumpers designed for off-highway use.

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ex	8705 20	Mobile drilling derricks for oil and gas.
	8905 20	Floating or submersible drilling or production platforms.
	9015 80	Seismographs and geophysical instruments and appliances.
	9015 90	Parts of seismographs and geophysical instruments and appliances.
	9026 10	Electrical instruments and apparatus for measuring or checking the flow or level of liquids.
	9026 20	Electrical instruments and apparatus for measuring or checking the pressure of liquids or gases.
	9026 80	Other instruments and apparatus for measuring or checking variables of liquids or gases, nesi.
	9026 90	Parts and accessories of instruments and apparatus for measuring or checking variables of liquids or gases.
	9028 10	Gas supply or production meters, including calibrating meters.
	9028 20	Liquid supply or production meters, including calibrating meters.
	9028 30	Electricity supply or production meters including calibrating meters.
	9028 90	Parts and accessories for gas, liquid, or electricity supply or production meters.
	9030 39	Instruments and apparatus, nesi, for measuring or checking electrical voltage, current, or resistance.
ex	9032 10	Thermostats for articles of headings 8402, 8403, 8404, and 8416.
ex	9032 20	Manostats for articles of headings 8402, 8403, 8404, and 8416.
ex	9032 81	Hydraulic and pneumatic instruments and apparatus for articles of headings 8402, 8403, 8404, and 8416.
ex	9032 89	Process control instruments and apparatus.
ex	9032 90	Parts of process control instruments and apparatus of heading 9032.89.

Energy Sector Services

A. Oil & Gas Field Services

1. *Exploration.* Exploration includes collecting scientific data through gravity, magnetic, sismic and geologic methods to assess the earth's subsurface characteristics and intimate the presence of oil and gas reserves. Governments through production sharing contracts or royalty/tax regimes often offer areas of exploration. Other services also are provided, such as exploration and production information systems, software and computer modeling services to help petroleum companies find, produce and manage oil and gas reservoirs.

2. *Drilling.* Drilling is the process of creating a well to locate and recover oil and gas. Drilling is often referred to as the production phase. Drilling is accomplished by using many specialized industry-specific contractors with unique equipment and services. These contractors include drilling, mud, downhole tools, logging, cementing, testing, stimulation and completion.

3. *Processing, Gathering & Refining.* This is the process of isolating saleable products from a mixed raw production stream. For example, crude oil is isolated from water and gas, or gas is isolated from water, hydrocarbon liquids and other inert gases. Gathering occurs by gathering oil or gas from a group of wells to isolate saleable products and at a larger level where these saleable products are distributed by pipeline, barge, etc. to a market. Gas also is gathered as coal bed methane and land fill methane, processed, stored and injected into the pipeline transmission system. Crude oil is processed at refining installations into a number of refined products, such as lubricants, fuels and gasoline. Other services under this heading include evaluation of producing formulations, production enhancement and well maintenance services.

4. *Design & Engineering.* Extensive specialized design, engineering, procurement and construction services are required in building production processing equipment, pipelines and gathering systems. In offshore situations there is also the matter of designing and construction platforms, processing equipment and gathering systems.

5. *Production (Construction, Operation & Maintenance).* This includes workover rigs and associated support services, which are similar to drilling listed above, except that these workover rigs are generally more specialized using different equipment. Operation and maintenance includes the support technical personnel, chemicals and service equipment to continuously process the oil and gas.

6. *Transportation.* Pipelines, barges, ships and trucks typically move oil, and pipelines typically move natural gas. Movement is from the production area to market locations such as refineries for oil and power plants and local distribution companies for natural gas. Natural gas also can be converted to liquified form and transported in specially designed ships to port facilities where it is regasified and transported through pipelines to market locations.

7. *Storage.* Crude oil is stored in large tanks at atmospheric pressure and temperatures. Natural gas can be stored in liquified form in specialized tanks or as compressed vapor in underground reservoirs.

8. *Trading, Marketing & Brokering.* In the oil and gas field services sector, these activities vary greatly depending on the location of the production vis-a-vis the market. They include working with transporters (ships, barges, pipelines and trucks) and major users (refiners, power plants and industries) to arrange long-term contracts.

9. *Support Services.* These include analysis of rock and other production field samples in order to access the commercial viability of a field. These tests and their results enhance competition and stimulation designs.

10. *Waste Management & Disposal.* This is a key concern and includes disposing of produced water, drill cuttings, drilling fluids and spent process fluids.

B. Electricity Services

1. *Design & Engineering.* This includes the selection of the configuration of a power plant, transmission system, substations, and various other equipment. Also included is the use of technology such as gas-fired or steam turbines, fluidized beds, or wind, solar or other renewable energy technologies. Design and engineering services can be greatly affected by requirements to include in-country materials or in-country design mandates. Design and engineering services also include all customary development work, such as acquiring all necessary permits and approvals, and contracts for fuel, transportation and other supplies.

2. *Generation (Construction, Operation & Maintenance).* This includes actual construction of the facility, start-up services, training of personnel, safety and security of personnel, material fabrication and installation, equipment financing, and equipment and construction warranties. Operation and maintenance services include the actual operation and maintenance of the facility as well as financial and management services, environmental and safety safeguards, periodic equipment replacements and upgrades, and efficiency programs. Included in the operation category are

fuel procurement services, acquisition of spare parts, and preventative and periodic maintenance.

3. *Transportation.* Transportation in the electricity service sector involves the movement of electricity along high voltage transmission lines. Additional services in this area include control room services of the central network, scheduling of electricity transmission, provision of ancillary services (such as, load following, stability services, reactive power, and spinning reserves), and access to the transmission system. These services also include the operation and maintenance of the transmission lines and upgrading of these lines based on advancements in technology.

4. *Distribution.* Distribution involves transporting electricity from high voltage lines to low voltage lines, including associated transformer and substation facilities, for delivery to end-use customers. These are the lines that are customarily seen in residential areas to deliver electricity to consumers. Additional services in this area include the repair and maintenance of distribution lines and facilities, response to customers' needs, installation of additional lines, up grades of lines and facilities, and installation of service to additional customers.

5. *Storage.* Unlike most commodities, electricity can not be stored economically except for the use of certain solar and fuel cell technologies. These services include the use of technologies for supplementing energy during peak hours or at the time other technologies are not available. Electricity, however, can be effectively ''stored'' by trading or swapping electricity for natural gas or other energy services during emergency, peak-load, or other high-cost hours. These services are highly specialized and case-specific and allow the various energy services to be substituted for each other in order to maximize efficiency and increase profitability.

6. *Trading, Marketing & Brokering.* These services include the buying and selling of electricity and electricity services for resale or for delivery to the ultimate customer, and the arrangement of transactions among buyers and sellers of these services. An electricity trader or marketer will buy (take title to) the electricity and take the risk that the electricity can be used or sold to another party. An electricity trader will also aggregate supplies of electricity and provide customers with custom fit services to meet their individual needs. Traders also arrange for the transportation of electricity to end-use customers. Brokers do not buy (take title to) electricity services but arrange transactions for buyers and sellers. They also may aggregate supplies and purchasers in order to take advantages of economies of scale involved in large volume transactions.

7. *Commodity & Price Risk Management.* These services include the providing of calls, puts, swaps, options and commodity price risk management tools whose underlying values are attached to the price of electricity. Even though these services are utilized by businesses worldwide, they can involve activities that may be prohibited under certain jurisdiction anti-gaming laws, because they are not tied directly to a physical commodity. The development of these services enhances the efficient operation of electricity markets by providing price discovery and price risk management tools to those dealing in the underlying physical commodity. These services also can lead to substantial benefits in the deployment of capital in the industry and improve economic efficiency.

8. *Demand-Side & Other Customer Services.* These include programs to reduce or restructure a customer's consumption of electricity in order to conserve electricity, shape overall consumption patterns, and enhance the efficiency of the production and delivery system. These services include energy audits, replacement or up grades of existing customer equipment, and other efficiency and conservation services that help an end-use customer manage the efficient use of electricity. These also include metering and billing services.

9. *Waste Management & Disposal.* This involves the handling and disposal of the residue from the combustion phase of electricity generation (coal ash, solid particulates, etc.). Other aspects include pollution control services such as fuel gas stack scrubbers, particulate reduction, and water treatment and disposal.

C. Natural Gas Services

1. *Design & Engineering.* Extensive specialized design, engineering, procurement and construction services are required in building natural gas production facilities, processing equipment, pipelines and gathering systems. In offshore situations there is also the matter of designing and construction platforms, processing equipment and gathering systems. These services also include the design and operation of information and communication equipment to facilitate communication between field and market participants (such as trading floors).

2. *Processing & Gathering.* This is the process of isolating saleable products from a mixed raw production stream. For example, natural gas is isolated from water, hydrocarbon liquids and other inert gases. Gathering occurs by gathering gas from a group of wells or from coal bed methane seams or land fills to isolate saleable products and at a larger level where these saleable products are distributed by pipeline to market. Natural gas also can be liquified for transportation by specially designed cargo ships to port facilities where it is regasified and injected into pipeline systems for transportation to markets.

3. *Transportation.* Pipelines typically move natural gas from gathering and processing facilities, or from liquified natural gas regasification facilities, to local distribution entities and end-use markets. Additional services in this area include the repair and maintenance of pipelines and associated equipment, response to customers' needs, management training, installation, up grade and expansion of pipelines, meters, storage and compression equipment, and installation of service to additional customers.

4. *Distribution.* Natural gas service is provided to end-use customers by a local distribution entity, which transports the gas from the high pressure transportation pipeline to consumers through lower volume and pressure pipelines. Additional services in this area include the repair and maintenance of mains, response to customers' needs, management training, installation of additional mains, meters, storage, compression and end-use equipment, and installation of service to additional customers.

5. *Storage.* Natural gas can be stored in liquefied form in specialized tanks or as compressed vapor in underground reservoirs. Storage services help coordinate gas supply and consumption patterns, thereby increasing the efficiency of the gas production, transportation, distribution and end-use system.

6. *Demand-Side and Other Customer Services.* These include programs to reduce or restructure a customer's consumption of natural gas in order to conserve natural gas, shape overall consumption patterns, and enhance the efficiency of the production and delivery system. These services include energy audits, replacement or up-grades of existing customer equipment, and other efficiency and conservation services that help an end-use customer manage the efficient use of natural gas.

These also include metering and billing services.

7. *Trading, Marketing and Brokering.* These services include the buying and selling of natural gas services for resale or for sale to the ultimate customer, and the arrangement of transactions between buyers and sellers of natural gas. A gas trader or marketer will buy natural gas and take the risk that the gas can either be used or resold to another party. A trader also will aggregate supplies of gas and provide customers with natural gas supplies and services that are custom fit to the consumer's needs. Traders also arrange for the transportation of gas to consumers. Brokers do not purchase natural gas supplies or services, but arrange transactions between buyers and sellers and also may aggregate suppliers and sellers in order to take advantage of large volume transactions.

8. *Commodity and Price Risk Management.* These services include the providing of calls, puts, swaps, options and commodity price risk management tools whose underlying values are attached to the price of natural gas. Even though these services are utilized by businesses worldwide, they can involve activities that may be prohibited under certain jurisdictional anti-gaming laws, because they are not tied directly to a physical commodity. The development of these services enhances the efficient operation of natural gas markets by providing price discovery and price risk management tools to those dealing in the underlying physical commodity. These services also can lead to substantial benefits in the deployment of capital in the industry and improve economic efficiency.

D. Mining and Mining Services

1. *Exploration.* Exploration services apply both advanced technologies including remote sensing from satellites and aircraft and physical surveys and sampling to pinpoint exact locations of mineral discovery. Drilling services are utilized at promising sites. Core sample testing services via chemical analysis, x-ray, microanalysis, and neutron activation analysis among others validate the mineral discovery. A wide range of commodities are mined including: coal, copper, iron, molybdenum, gold, phosphate, bauxite, zinc, lead, trona, limestone, silver, diamonds.

2. *Regulatory Approvals and Environmental Permitting.* Environmental engineering services are applied to thoroughly study the environmental characteristics and impacts of the proposed mine in areas including air quality, archaeological and cultural, groundwater modeling, noise, socioeconomic, surface water, wetlands, and other impacts. Environmental permitting specialists assist in preparation of studies and documents to meet the various local, state and federal requirements. Public relations specialists communicate with the various publics involved in the process. Environmental specialists prepare plans to protect the environment throughout the mining process, during reclamation of the site and into perpetuity.

3. *Development.* Mine planning specialists design detailed customized plans for surface or underground mining. The plan details the flow of activity, positioning of all support structures and processes and definition of equipment to be utilized. A variety of services are utilized as structures are built, equipment is procured, a workforce is hired, management staff is appointed, training programs are developed and the operation prepares for startup. Development may be performed directly by mine owners/operators or through specialized consultants and subcontractors in part or in entirety.

4. *Extraction.* In surface mining, the extraction process begins by removing any overburden down to the mineral level. Hard overburden and ores are drilled and blasted into fragments. The fragmented material is then loaded into transport vehicles or conveyors to carry it to a dumping or processing area. Crushing of the material may occur during the transport cycle as well as during processing of the ore. Waste rock and tailings are carefully managed throughout the operation of a mine. Mines generally operate 24 hours a day, 365 days a year, so planning for proper inspection, parts inventory management, maintenance, repair, lubrication and upgrading of equipment and haul roads to assure maximum productivity is critical. Activities may be undertaken by the mine staff or contracted.

If mineralization is deep beneath the surface, shafts or passageways are drilled in order to remove the ore and waste and provide ventilation. Various approaches to mining underground essentially cut the mineral from the walls and convey it back to the surface for loading into rail cars or trucks for transfer to processing. Various engineering disciplines are required to maximize the reserve recovery at the lowest economical cost.

5. *Processing.* Many minerals require separation from the rock in which they are found. The mineral may then require concentration, usually by crushing or grinding the material. Flotation processes, heap leaching or in situ processes may be used, depending on the mineral and the ore body configuration. In the case of coal, washing and blending to grade may be required. Various treatments for iron ores are required depending upon their use in final steelmaking. Waste products resulting from processing need to be disposed of in an environmentally responsible manner.

6. *Production/Technology.* To date, mature mining markets have increased their productivity and reduced their costs via mechanization. Mechanization has nearly reached its ceiling. Future enhancements will include the electronic/information systems which allow existing mechanical/hydraulic systems to communicate among themselves & optimize performance. Developing markets will be forced to compete on a cost basis in the future. Most likely, they will follow the trend of the mature markets (i.e. mechanization). Producing more product with fewer people will create difficult political, social & economical decisions for these countries.

7. *Marketing.* Coal mines establish contracts with utilities or sell coal on spot markets, while minerals are marketed to industrial processors or users, or in some cases, agricultural customers.—Hard rock mineral prices fluctuate relative to the commodities market. There is a trend in the coal market toward commodity market behavior due to deregulation/privatization of the utility industry.

8. *Transportation.* Coal and minerals are transported to processing facilities and ultimately to the marketplace for those commodities. Railroads, ore boats, conveyor belt lines and trucking are used extensively. Aircraft may be used to transport others. In remote mines, transportation is provided to fly mine staff in and out of the property. Transportation of all equipment and resources to explore, develop, operate, service and reclaim a mine are also key considerations.

9. *Reclamation.* The modern mining industry is held accountable for protection of the environment. In most developed countries, reclamation is an integral and ongoing aspect of the mine plan of operation and independent laboratories administer tests to assure compliance. Consultants provide guidance. Environmental specialists work to meet all permitting requirements during mining operations and reclamation.

10. *Recycling.* Many mining companies have active recycling operations. Steel and lead in particular are successfully recovered at plants designed specifically for those purposes.

11. *Engineering.* Design of the equipment and infrastructure to explore, extract, process and transport minerals along with the design of mine plans which utilize this equipment optimally is an extremely challenge task. The history of mining in the world is that the easiest reserves are always mined first. Future mining will include more difficult mining conditions, lower quality minerals/ores and more stringent regulatory requirements. In part, this will be accomplished successfully with improvements in engineering design/approaches.

Service Summary—The mining industry is supported by a wide variety of equipment and service suppliers including: mining equipment and consumables, processing equipment, support equipment and maintenance services, mining subcontractors, chemicals and explosives, technical support services, engineering services, environmental services, MIS services, human resources and infrastructure, international trading and governments, power generation and infrastructure.

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Illustrative List of Environmental Goods	HS	HS description
Air Pollution Control		
Particulate emissions collectors (particulate: a particle of solid or liquid matter) bins, tanks, silos, blowers, multi-stage blowers, classifiers, cartridge dust collectors, bag dust collectors, bag filters, drum filters, filter receivers, hepa filters, dry filters, wet filters, magnets, bag dump stations	7019.90 7309.00 7310.00 7610.90 8414.80 8421.31 8421.39	Glass fiber filters Reservoirs, tanks, and vats for any material, of a capacity exceeding 300 liters Tanks, casks, drums, cans, boxes or iron or steel Other, aluminum structures; aluminum plates, rods, profiles, tubes and the like, prepared for use in structures Other, except parts, air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods Intake air filters for internal combustion engines Other, filtering or purifying machinery for gases
Gaseous emissions control systems and devices electrostatic precipitators (devices in which solid or liquid particulates in a gas stream are charged as they pass through an electric field and then caught on a collection surface), fume collectors	8402.11 8402.12 8402.19 8402.20 8402.90 8404.10 8404.20 8404.90 8421.39 8419.60 8419.89 9032.81	Steam generating boilers, exceeding 45 t per hour Steam generating boilers, not exceeding 45 t per hour Other vapor generating boilers Super heated water boilers Parts Auxiliary plant for use with boilers Condensers for steam or other vapor Parts Other, filtering or purifying machinery for gases Machinery for liquefying air or other gases Machinery for treatment of materials involving a change in temperature Other controlling instruments, hydraulic and pneumatic
Mobile Source Control equipment (mobile source: a moving producer of air pollution, mainly forms of transportation such as; cars, motorcycles, planes) Catalytic converters (air pollution abatement device that removes organic contaminants by oxidizing them into carbon dioxide and water through chemical reaction, but in this context are more commonly known as the devices used to reduce nitrogen oxide emissions from motor vehicles)	8421.39	Other, filtering or purifying machinery for gases
Monitoring/control systems (all the equipment required to measure and record all parameters as well as all control equipment)	9032.10 9032.20 9032.81 9032.89 9032.90 9033.00	Thermostats Controlling instruments, manostats Other controlling instruments, hydraulic and pneumatic Other, regulating or controlling instruments Parts and accessories, regulating or controlling instruments Parts and accessories, not specified, for regulating or controlling instruments
Gas separating equipment	8421.39	Other, filtering or purifying machinery for gases
Odor control equipment scrubbing systems	7610.90 8421.39 8424.90	Other, aluminum structures; aluminum plates, rods, profiles, tubes and the like, prepared for use in structures Other, filtering or purifying machinery for gases Parts, appliances for dispersing or spraying liquids or powders

Illustrative List of Environmental Goods	HS	HS description
Other air pollution control equipment bucket elevators, conveyors, cyclones, dampers, diverter valves, metal expansion joints, fabric expansion joints, axial fans, centrifugal fans, hoods and ducting	8414.90 8428.20 8428.32 8481.10 8481.30 8481.40 8481.80	Ventilating & recycling hoods Pneumatic elevators and conveyors Other, bucket types continuous action conveyers Pressure-reducing valves Check valves Safety or relief valves Other appliances, taps, cocks, valves
Waste Water Management		
Desalinization Equipment	8421.21	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water
Storage tanks and process vessels (Including pressure vessels) liquid level gauges, pressure gauges, storage tanks, high pressure rodders	7309.00 7310.10 7310.21 7310.29 7610.90 8901.90 9026.10 9026.20	Reservoirs, tanks, and vats for any material, of a capacity exceeding 300 liters Tanks or drums of a capacity of 50 liters or more Tanks or drums of a capacity of less than 50 liters Other containers Other, aluminum structures; aluminum plates, rods, profiles, tubes and the like, prepared for use in structures Other vessels for the transport of goods (water storage tanks) For measuring or checking the flow or level of liquids For measuring or checking pressure
Industrial separators (Including centrifuges) solids centrifuges, sludge centrifuges, oil and water separators, grease interceptors and concentrators	8421.19 8421.29 8421.91 8421.99	Other, centrifuges including filtering or purifying machine for liquid or gas Other, filtering or purifying machines for liquids Parts of centrifuges Parts for filtering or purifying water
Sampling equipment (Automated and manual) suspended solids monitoring equipment, multi-parameter monitoring systems, pH monitoring systems, flow meters, gas and liquid chromatographs, combustible/toxic gas detectors, carbon monoxide monitors, hydrocarbon detection monitors, hydrogen sulfide detection, dissolved oxygen meters, radioactivity monitors, rain gauges, water level recorders, bacterial respirometers, sludge thermometers, smoke testing equipment	9025.11 9025.19 9025.80 9026.10 9026.20 9026.80 9026.90 9027.10 9027.20 9027.30 9027.40 9027.50 9027.80 9028.10 9028.20 9031.49 9031.80	Thermometers and pyrometers, not combined with other instruments Other Other instruments For measuring or checking the flow or level of liquids For measuring or checking pressure Other measuring and checking instruments Instruments parts and accessories Instruments for analysis Electrophoresis instruments Spectrophotometers Exposure meters Instruments using optical radiations Other instruments and apparatus Gas meters Liquid meters Other optical instruments and appliances Other instruments, appliances, and machines

Illustrative List of Environmental Goods	HS	HS description
Fluid filters (including housings) vacuum filters, beltpress filters, automatic backwash filters, biological filters, pressure filters, filtration sand, screens, screen rakes, coarse screens, disc water screens, drum wastewater screens, vibrating wastewater screens, screening accessories, pipe and suction strainers, micro strainers	8421.21 8421.29 8421.99	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids Other, centrifuges, including centrifugal dryers; filtering or purifying machinery for liquids and gases
Sewage treatment equipment Sewer equipment: compressors and blowers for sewage aeration, sewer cleanouts, sewer sliplining, sewer grouting, sewer rodding equipment, sewer cleaning equipment, sewer insecticides, sewer dye tracers Sludge equipment: sludge collectors, sludge shredders, sludge density and condition control equipment, sludge thickeners, sludge bed enclosures, sludge codisposal systems, sludge land spreading equipment, sludge dryers, sludge heaters, sludge incinerators, sludge reactors, sludge removal equipment, sludge solidification and fixation equipment, sludge weighing systems, sludge belt presses, pumber trucks for sludge removal Other sewage equipment: grit collection equipment, grit classifiers, grit washers, clarifiers, ultra-violet disinfection systems, dissolved air flotation clarification systems, elements to increase surface area for bacteria culture, disintegrators, choppers, feeders, high shear mixers, extruders, paddle dryers, rotary drum dryers, sectional coolers, flash dryers, tray dryers, conveyors, crushers, septage receiving systems, septic tanks, wastewater pond baffles, wastewater pond liners, wastewater drainage floors, wastewater irrigation equipment, spray nozzles, sequencing batch reactors, root control equipment, digesters: aerobic and anaerobic Chemicals: ferric chloride, ferrous chloride, ferric sulfate, ferrous sulfate (used for slude conditioning, enhanced coagulation, ordor control, corrosion)	5801.90 7304.31 7309.00 7310.10 7310.21 7310.29 7610.90 8410.00 8414.30 8414.80 8417.80 8423.81 8423.82 8423.89 8424.90 8426.20 8427.10 8479.82 8479.89 8481.80 8514.10 8514.20 8514.30 8514.40	Other woven pile fabrics and chenille fabrics Tubes/pipes for boilers, feedwater heaters, condensers Reservoirs, tanks, vats of iron or steel Tanks or drums of a capacity of 50 liters or more Tanks or drums of a capacity of less than 50 liters Other containers Other, aluminum structures; aluminum plates, rods, profiles, tubes and the like, prepared for use in structures Hydraulic turbines, water wheels, and regulators Compressors of a kind used in refrigeration, including air conditioning Other, except parts, air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods Other, except parts, industrial or laboratory furnaces and ovens, including incinerators Other weighing machinery, capacity not exceeding 30 KG Other weighing machinery, capacity exceeding 30 KG but not 5,000 KG Other, weighing machinery Parts, appliances for dispersing or spraying liquids or powders Tower cranes Self-propelled trucks powered by an electric motor (ie. pumper trucks for sludge removal) Mixing, kneading, crushing, grinding machines Other, electromechanical appliances with self-contained electric motor Other appliances, taps, cocks, valves Resistance heated furnaces and ovens Induction or dielectric furnaces and ovens Other furnaces and ovens Other induction or dielectric heating equipment
Pack tower aerators (Packed tower: A pollution control device that forces dirty air through a tower packed with crushed rock or wood chips while liquid is sprayed over the packing material. The pollutants in the air stream either dissolve or chemically react with the liquid.)	8479.89	Other, electromechanical appliances with self-contained electric motor
Deionization equipment ion selective analyzers, ion exchangers, selective ion electrodes	8543.89 9030.10	Other electrical machines and apparatus w/ individual functions Instruments and apparatus for measuring or detecting ionizing radiations
Pumps	8413.50 8413.60 8413.70 8413.81 8414.10	Other reciprocating positive displacement pumps Other rotary positive displacement pumps Other centrifugal pumps Other pumps, turbine pumps, windmill pumps Vacuum pumps
Metal removal/recovery Precipitation chemicals, automated treatment equipment		

Illustrative List of Environmental Goods	HS	HS description
Solid/liquid separation (not covered under municipal sewage sludge) filters, presses	8419.40	Distilling or rectifying plant
All other water and wastewater equipment trench less pipe technology, pipe camera systems, absorption equipment, rodent controls	7303.00 8419.89 8479.50 8525.30 8525.40 8543.89 9006.51 9006.52 9006.53 9006.59	Soil pipe Other machinery, plant, or laboratory equipment for the treatment of materials Industrial robots, not elsewhere specified or included Television cameras Still image video cameras and other video Other, electrical machines and apparatus, having individual functions Other cameras, with through-the-lens viewfinder Other, for roll film of a width less than 35 mm Other, for roll film of a width of 35mm Other
Solid/Hazardous Waste Management		
	7309.00 7310.00 7610.90 8430.50 8430.60 8431.41 8431.42 8417.10 8417.80 8417.90 8479.82 8479.89 8514.10 8514.20 8514.30 8705.90	**Solid waste equipment** storage containers (including metal and concrete), incinerators (including steel and concrete), compactors, conveyors, shredding machinery, balling machinery, vehicles: tank trucks, dump trucks, other trucks
Spill clean-up and containment equipment Gas management equipment	6810.99 7806.00	Other, articles of cement, of concrete, or of artificial stone Other articles of lead
Pit and landfill liners		
Truck bodies		
Gas management equipment		

Illustrative List of Environmental Goods	HS	HS description
Remediation/Clean-up of Soil and Water		
Air sparaging equipment (This process extends the effectiveness of soil vapor extraction to include contaminants that exist in groundwater. The equipment is used to pump air into contaminated site below the saturation level, rising air bubbles trap contaminants and take them up for collection and treatment.)	8421.39	Other, filtering or purifying machinery and apparatus for gases
Bio remediation Oxygen release compund - used to allow bio remediation of dissolved petroleum hydrocarbons (bio remediation - the process of oxygenating a substance to make it non-toxic)	5911.90	Other, textile products and articles, for technclal uses
Biofiltration equipment (Concerns the use of plants, bacteria or other microorganisms to filter wastewater or polluted)	8421.21 8421.39 8421.99	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, machinery or apparatus for filtering or purifying gases Other, centrifuges, including centrifugal dryers; filtering or purifying machinery for liquids and gases
Dry sieves	8421.29	Other, filtering or purifying machinery or apparatus for liquids
Dry sieve separation	8421.21 8421.29 8421.39	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids Other, machinery or apparatus for filtering or purifying gases
Dual phase extraction (Combines soil vapor extraction and ground water extraction by using a ground water extraction trench around the polluted area, while a soil vapor extraction apparatus is introduced to treat areas with the highest pollutant levels.)	8421.21 8421.29	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids
Critical fluid extraction	8421.21 8421.29	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids
Foam Separation (Equipment such as film filters used to separate the foam that rises to the top of wastewater or slurries in processing.)	8421.21 8421.29	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids
Geo textiles		
Geophysics characterization (Equipment used to determine the chemical and physical characteristics of a site.)	9027.10 9027.20 9027.30 9027.40 9027.50 9027.80	Gas or smoke analysis apparatus Gas, liquid, and other chromatographs Spectroscopes, spectrophotometers, spectrometers Exposure meters Other instruments and apparatus using optical radiations Other instruments and apparatus

Illustrative List of Environmental Goods	HS	HS description
In situ flushing equipment (water, steam) (Equipment used in the process of flooding contaminated soil with a solution that moves the contaminants to an area where they are removed. "In situ" meaning in place refers to treating the soil without digging it up and removing it.)		
In situ vitrification equipment (Equipment used in the process of heating contaminated soil in place to chemically and physically change contaminants into a benign form, used for the stabilization of radioactivity contaminated soils. Alternating current (AC) or radio frequency (RF) equipment can be used in this process.)	8421.21 8421.29	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids
Infrared thermal destruction equipment (Equipment that is employed in the process of destroying contaminants in soil or groundwater through heating with infrared light.)	8516.29 9013.20	Soil heating apparatus Lasers
Incinerators (Any furnace used in the process of burning waste for the primary purpose of reducing the amount of waste by removing combustible matter. Also includes devices using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste.) Rotary kiln incinerator, fluidized bed incinerator, liquid injection incinerator and others.	8421.29 8417.80 8417.90 8419.19 8514.10 8514.20 8514.30 8514.40	Other, filtering or purifying machinery or apparatus for liquids Other, except parts, industrial or laboratory furnaces and ovens, including incinerators Parts, industrial or laboratory furnaces and ovens, including incinerators Other, instantaneous or storage water heaters, nonelectric Resistance heated furnaces and ovens Induction or dielectric furnaces and ovens Other furnaces and ovens Other induction or dielectric heating equipment
Liners/membranes		
Low temperature thermal distortion equipment	8543.89	Other machines having individual function not specifies elsewhere
Intrinsic remediation equipment (Also called natural attenuation allows natural contaminant degradation to occur through biogradation. The process can be accelerated by adding oxygen to the system.)	2521.00 8543.89	Limestone Other, electrical machines and apparatus having individual functions
Land farming equipment (Equipment used to remove contaminated soil for treatment.)	8429.19 8429.20 8429.30 8429.40 8429.51 8429.52 8429.59	Other, bulldozers and angledozers Graders and levelers Scrapers Tamping machines and road rollers Mechanical shovels, excavators and shovel loaders Machinery with a 360° revolving superstructure (backhoes, shovels, clamshells, & draglines) Other
Leak prevention equipment (Any equipment used to prevent leaks in any kind of containment facility, most commonly refers to liners used in landfills and wastewater treatment facilities.)	8479.89	Other, electromechanical appliances with self-contained electric motor

Illustrative List of Environmental Goods	HS	HS description
Membrane filtration equipment (Amy use if membranes to separate out contaminants from wastewater.)	8421.21 8421.29 8421.39	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids Other, filtering or purifying machinery and apparatus for gases
Metal fixation equipment		
Microfiltration equipment (More selective membrane filtration that filters out smaller particles of pollutants.)	8421.21 8421.29 8421.39	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids Other, filtering or purifying machinery and apparatus for gases
Photocatalytic oxidation equipment (Use of sunlight for detoxification and disinfection. The process is accelerated by the use of semiconductor catalysts.)	8419.39 8479.89 8543.89	Other, dryers Other, electromechanical appliances with self-contained electric motor Other, electric machines and apparatus not specified or included elsewhere in this chapter
Photothermal detoxification equipment (Equipment that employs the use of light to heat and destroy toxic contaminants.)	8543.89	Other, electric machines and apparatus not specified or included elsewhere in this chapter
Phytoremediation equipment (Materials employed to clean up contaminated soil and water through the use of plants and trees. Phytoextraction: plants take up metal contaminants in roots, stems, and leaves, then are harvested and incinerated or composted. Rhizofiltration: contaminated water collected from a site is brought to greenhouse site where it is filtered by root systems. Phytodegradation: plants break down organic pollutants.)	8543.89	Other, electric machines and apparatus not specified or included elsewhere in this chapter
Plasma arc vitrification equipment (Waste materials are fed into a sealed furnace and heated to extremely high temperatures. Organic pollutants are burned off and remaining solids turn into a glassy byproduct that can be resold.)	8543.89	Other, electric machines and apparatus not specified or included elsewhere in this chapter
Pneumatic fracturing equipment (Equipment used to increase the permeability of soil by injecting highly pressurized air into consolidated sediments that are contaminated. The increased permeability accelerates the removal of contaminants particularly by vapor extraction, biodegradation, and thermal treatment.)	8479.89 8543.89	Other, electromechanical appliances with self-contained electric motor Other, electric machines and apparatus not specified or included elsewhere in this chapter
Reductive photo-dechlorination equipment	8479.89 8543.89	Other, electromechanical appliances with self-contained electric motor Other, electric machines and apparatus not specified or included elsewhere in this chapter
Slurry walls (cutoffs)		
Soil vapor extraction equipment (Equipment used to extract contaminants from soil in vapor form.)	8421.21 8421.29 8421.39	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids Other, filtering or purifying machinery and apparatus for gases

Illustrative List of Environmental Goods	HS	HS description
Solvent extraction equipment (Equipment used to separate hazardous contaminants from soils, sludges, and sediments.)	8421.21 8421.29	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids
Surfactant aide remediation		
Thermal oxidation equipment (Equipment used to treat waste in which the contaminated matter is mixed with air and then heated to high temperatures. the hydrocarbons oxidize to form carbon dioxide and water while other contaminants are scrubbed out later after being broke down.)	8479.89 8543.89	Other, electromechanical appliances with self-contained electric motor Other, electric machines and apparatus not specified or included elsewhere in this chapter
Thermal vacuum extraction equipment	8421.21 8421.29 8543.89	Filtering or purifying machinery or apparatus for liquids for filtering or purifying water Other, filtering or purifying machinery or apparatus for liquids Other, electric machines and apparatus not specified or included elsewhere in this chapter
Ultra-Violet oxidation equipment (Equipment used for a destructive process that combines the use of ultraviolet light (UV) and chemical oxidants, such as ozone and hydrogen peroxide to destroy organic and explosive contaminants in groundwater)	8479.89	Other, electromechanical appliances with self-contained electric motor
In situ biobarriers (Barriers used in place to contain and treat contaminated zones. Usually consist of a trench filled with some form of filtration material that collects contaminants as the groundwater filters through.)		
Vapor phase bioreactors (Bioreactors or "hot tubs" use engineered living cells as catalysts to breakdown pollutants. The vapor phase bioreactors are used to treat air borne pollutants.)	8479.89	Other, electromechanical appliances with self-contained electric motor
Liquid phase bioreactors (Same idea as vapor phase bioreactors, but used to treat pollutants in a liquid form, ie. wastewater.)	8479.89	Other, electromechanical appliances with self-contained electric motor
Noise/Vibration Abatement		
Highway barriers	7306.90 8409.91 8409.99 8479.89	Other, tubes, pipes, and hollow profiles of iron or steel Industrial mufflers Other, parts suitable for use solely or principally with engines of heading 8407 or 8408 Other, electromechanical appliances with self-contained electric motor
Monitoring/Analysis and Assessment		
Freezers and refrigerators		

Illustrative List of Environmental Goods	HS	HS description
Microtomes (Laboratory equipment used for cutting sections to prepare specimens for microscopic analysis.)	9027.90	Microtomes, parts and accessories
Laboratory separators (Including centrifuges)	8421.19 8421.29 8421.91	Other, centrifuges including filtering or purifying machine for liquid or gas Other, filtering or purifying machinery or apparatus for liquids Parts of centrifuges
Chromatography (Including gas, liquid, and other)	9027.20	Gas, liquid, and other chromatographs
Mass spectrometers	9027.30	Spectroscopes, spectrophotometers, spectrometers
Level and flow leak detector and sensors		
Industrial process monitoring devices Instruments and apparatus for measuring or checking flow, level, pressure, or other variables of liquids or gases	9026.10 9026.20 9026.80 9026.90 9032.20 9032.81	For measuring or checking the flow or level of liquids For measuring or checking pressure Other instruments or apparatus Parts and accessories Manostats Other instruments or apparatus.
Radiation detection devices	9030.10	Instruments and apparatus for measuring or detecting ionizing radiations
Flow measurement devices	9026.10 9026.20 9026.80	For measuring or checking the flow or level of liquids For measuring or checking pressure Other instruments or apparatus
Gas detectors	9027.10	Gas or smoke analysis apparatus
Continuing supply devices		
Other scientific and analytic instruments	9032.81 9032.89	Other instruments or apparatus Other, automatic regulating or controlling instruments and apparatus
Potable Water Treatment		
Boiler Materials iron reduction equipment, lime softening equipment, chlorine dioxide generators, chlorine leak monitors, chlorine residual monitors, fluoridation equipment, nitrate monitors, manganese reduction equipment, boron removal equipment	8419.89 8479.89 8548.10	Other machinery, plant, or laboratory equipment for the treatment of materials Other, electromechanical appliances with self-contained electric motor Waste and scrap of primary cells, primary batteries, and electric storage batteries

Illustrative List of Environmental Goods	HS	HS description
Compounds boiler compounds, cooling tower compounds, all other water and wastewater compounds		
Chemcials chlorine, iodine, bromine, ozone gas		
Other treatments hydrogen sulfide removal process, ultaviolet light irradiation		
Other Recycling Systems		
Recycling	8422.20 8474.20 8474.90 8477.80 8477.90 8479.82 8479.90	Machinery for cleaning and drying bottles Crushing or grinding machines (ie. shredders to recycle glass) Parts, machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading (ie. parts of shredders to recycle glass) Other machinery, machinery for working rubber or plastics (ie. shredders to recycle plastic) Parts of other machinery, machinery for working rubber or plastics (ie. parts of shredders to recycle plastic) Mixing, kneading, crushing, grinding, screening sifting, homogenizing, emulsifying or stirring machines having individual functions, not specified elsewhere in chapter (ie. parts of shredders oil filters to get the oil out and recover metal) Parts for machines having individual functions, not specified elsewhere in chapter (ie. parts of shredders oil filters to get the oil out and recover metal)
Renewable Energy Plant		
Residential/Commercial/Industrial solar collectors (Including active and passive)	8413.60 8419.11 8419.19 8541.40	Solar electric pump motors Heat recovery systems Solar water heaters Photosensitive semiconductor devices
Wind energy conversion equipment turbines, turbine sets, windmills, parts	8413.81 8502.31	Windmill pumps Wind powered generating units
Other turbines hydroturbines	8410.11 8410.12 8410.13 8410.90	Hydraulic turbines and water wheels, of a power not exceeding 1,000 kw Hydraulic turbines and water wheels, of a power exceeding 1,000 kw but not exceeding 10,000 kw Hydraulic turbines and water wheels, of a power exceeding 10,000 kw Parts, including regulators
Residential photovoltaics	8541.40	Photosensitive devices
Industrial wood fired boiler		
Methanol (Including natural and synthetic)		
Ethanol		

Illustrative List of Environmental Goods	HS	HS description
Heat/Energy Management		
Heat exchangers (devices that transfer heat from one fluid to another without allowing them to mix, both industrial and nuclear)	8415.83 8418.61 8419.11 8419.50 8479.60	Heat exchangers Compression type units whose condensers are heat exchangers Heat recovery system Parts, air conditioning machines Evaporative air coolers

Notes: This illustrative list is based on the OECD Framework described in the sectoral proposal for the Environmental Goods and Services Sector.

BILLING CODE 7020-02-P

ILLUSTRATIVE LIST OF ENVIRONMENT SERVICES

Div.	Sub.	Title
54	.....	Construction Services.
	54342	Septic system installation services.
	54650	Insulation services.
61	.....	Wholesale trade Services.
62	.....	Retail Trade Services.
	***76	Cleaning materials.
	***87	Other industry specific machinery and equipment and related operating supplies.
	***89	Other machinery and equipment n.e.c.
	***95	Waste & scrap & other material for recycling.
64	.....	Land Transportation Services under various modes, e.g., by rail, road.
65	.....	Water Transportation Services and under various modes, e.g., by sea.
	65219	Other coastal & transoceanic water transport of freight.
	65229	Other inland water transport services of freight.
69	.....	Various Distribution Services.
	69210	Water, except steam & hot water, distribution services through mains.
81	.....	Research & Development Services.
	81130	Research & Development Services in engineering and technology.
	81190	Research & Development Services in other natural sciences.
	81300	Interdisciplinary research & experimental development services.
83	.....	Other Professional, Scientific and Technical services.
	83131	Environment consulting services.
	83399	Other engineering services, other projects.
	83520	Subsurface surveying services.
	83530	Surface surveying services.
	83561	Composition & purity testing & analysis services.
86	.....	Production services, on a fee or contract basis.
	86222	Services incidental to water supply.
	86590	Installation services of other goods.
	86931	Metal waste & scrap recycling services.
	86932	Non-metal waste & scrap recycling services.
87	.....	Maintenance & Repair Services.
	87159	Maintenance & repair services of machinery & equipment n.e.c.
94	.....	Sewage & Refuse Disposal, Sanitation & Other Environmental Protection Services.
	94110	Sewage treatment services.
	94120	Tank emptying & cleaning services.
	94211	Non-hazardous waste collection services.
	94212	Non-hazardous waste treatment & disposal services.
	94221	Hazardous waste collection services.
	94222	Hazardous waste treatment & disposal services.
	94310	Sweeping & snow removal services.
	94390	Other Sanitation services.
	94900	Other environmental protection services.

Based on the Draft Central Product Classification (CPC) (Services Par; Sections 5–9) Version 1.0.

Notes:

1. This list is not comprehensive, but illustrative
2. CPC Version 1.0 provides further details on subclasses, i.e., short lists of services included and sometimes services excluded with cross-references to other parts of CPC Version 1.0.
3. This list is adapted from the document passed out by the Canadian Delegation at the APEC meetings in Penang in February 1998.

[FR Doc. 98–8530 Filed 3–31–98; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–397]

In the Matter of Certain Dense Wavelength Division Multiplexing Systems and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting the parties'' joint motion to terminate the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 2, 1997, based on a complaint filed by CIENA Corporation in which CIENA alleged that Pirelli S.p.A., Pirelli Cavi S.p.A., and Pirelli Cable Corp. (collectively ''Pirelli'') violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing into the United States, selling for importation, and/or selling in the United States after importation certain dense wavelength division multiplexing systems or components that infringe certain claims of CIENA's U.S. Letters Patent 5,557,439 and/or U.S. Letters Patent 5,504,609.

On November 25, 1997, CIENA and Pirelli filed a joint motion to terminate the investigation by consent order. The Commission investigative attorney (''IA'') responded that he would support the joint motion if certain modifications

were made. On December 24, 1997, movants supplemented their joint motion by filing a revised proposed consent order. The IA responded that he would now support termination of the investigation on the basis of the revised consent order and consent order stipulation.

On March 5, 1998, the presiding administrative law judge (''ALJ'') issued an ID (Order No. 6) terminating the investigation on the basis of the revised consent order. None of the parties, including the IA, filed a petition to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: March 24, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–8531 Filed 3–31–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–399]

In the Matter of Certain Fluid-Filled Ornamental Lamps; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation in Its Entirety and Issuance of Consent Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's (ALJ's) initial determination (ID) terminating the above-captioned investigation as to every respondent on the basis of a consent order, a settlement agreement, or withdrawal of the complainant's allegations against the respondent. The investigation is therefore terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. General information concerning the Commission also may be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

On May 22, 1997, Haggerty Enterprises, Inc., filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fluid-filled ornamental lamps that infringe U.S. Trademark Registration Nos. 1,611,140 and/or 852,625. The Commission provisionally accepted the motion for temporary relief for further processing and instituted the investigation on July 1, 1997. Eleven firms were named as respondents: Lipan Industrial Co., Ltd.; Gemmy Industries Corporation; Kay-Bee Center Inc.; Walgreen Company; Six G's Inc.; Adams Apple Distributing Company LP; A-Mic Corporation; Charlotte Buchanan, d/b/a Glamorama; Fortune Products, Inc.; J.J.M. Novelties; and Original Lighting Inc. *See* 62 FR 35525 (July 1, 1997).

Between July 23 and August 4, 1997, complainant Haggerty moved for termination of the investigation as to every respondent. Termination as to respondents Six G's, Charlotte Buchanan, Original Lighting, Gemmy, Kay-Bee, and Walgreen was sought on the basis of consent orders. (Motions Nos. 399–2 through 399–4 and 399–8.) The motions for termination as to respondents J.J.M., Adams Apple, A-Mic, and Fortune were based on Haggerty's withdrawal of its section 337 allegations against those respondents. (Motions Nos. 399–5 and 399–6.) Termination as to respondent Lipan was sought on the basis of a settlement agreement. (Motion No. 399–7.)

On August 13, 1997, the Commission investigative attorney filed a response supporting the motions.

On March 4, 1998, the ALJ issued the ID granting the motions and ordering termination of the investigation in its entirety (including the temporary relief proceeding). No party petitioned for review of the ID pursuant to 19 CFR 210.43(a).

The Commission's action was taken under the authority of 19 U.S.C. 1337(c) and 19 CFR 210.42.

All nonconfidential documents filed in the investigation—including the ID, the motion for termination as to each respondent, the consent orders and the settlement agreement, and the Commission investigative attorney's response to the motions for termination—are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202–205–2000.

Issued: March 24, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–8532 Filed 3–31–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs Office for Victims of Crime

[OJP(OVC)–1167]

RIN 1121–ZB04

Cancellation of the Victim Sensitive Family Group Conferencing in School Settings Solicitation

AGENCY: Office of Justice Programs, Office for Victims of Crime, Justice.

ACTION: Notice of cancellation.

SUMMARY: The Office for Victims of Crime (OVC) is canceling the solicitation, *Victim Sensitive Family Group Conferencing in School Settings.* This solicitation, which appeared on page 15 of OVC's FY 1998 Discretionary Program Application Kit, was one of ten competitive solicitations. The Application Kit was published on February 17, 1998. Monday, April 27, 1998 was announced as the due date for applications for this solicitation. As this solicitation is being canceled, the due date for this solicitation is no longer in effect and OVC will neither accept nor review applications submitted in response to this particular solicitation. This program may be advertised again in FY–99 if OVC staff and funding resources are in sufficient quantity to support this program at that time.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, write, e-mail, or call Marti Speights, Director, Special Projects Division,

Office for Victims of Crime, at 810 7th Street NW, Washington, DC 20531. E-mail: marti@ojp.usdoj.gov, Telephone: (202) 616–3582.

Reginald L. Robinson,

Acting Director Office for Victims of Crime

[FR Doc. 98–8507 Filed 3–31–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act [Public Law 94–409] [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice United States Parole Commission.

TIME AND DATE: 1:30 p.m., Thursday, April 2, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS T0 BE CONSIDERED:

The following matters have been placed on the agenda for the open Parole Commission metting:

1. Approval of minutes of previous Commission meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Approval of transmission of warrants by electronic means.

4. Approval of expedited revocation procedure.

5. Approval of proposed rules for District of Columbia prisoners (to be published in the Federal Register for notice and comment).

6. Approval of revised definition of ''public sector information'' in 28 C.F.R. § 2.37.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 26, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–8614 Filed 3–30–98; 10:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Pursuant to The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Thursday, April 2, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED:

The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeal to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 26, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–8621 Filed 3–30–98; 10:57 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Housing Programs

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications.

SUMMARY: This notice contains all information required to submit a grant application. The U.S. Department of Labor, Employment and Training Administration (ETA), announces the availability of $2,460,383 to award competitive grants for projects that assist farmworkers in seeking and securing temporary or permanent housing. This program is supported by funds made available pursuant to Title IV, section 402, of the Job Training Partnership Act.

DATES: Applications for grant awards will be accepted commencing May 1, 1998. The closing date for receipt of applications shall be May 18, 1998, at 2 p.m. (Eastern Standard Time) at the address below.

ADDRESSES: Submit an original and four (4) copies of the application to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. ATTN: Ms. Irene Taylor-Pindle, Reference SGA/DAA 98–008.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Irene Taylor-Pindle, Division of Acquisition and Assistance, Telephone: (202) 219–8702 ext. 114 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Solicitation for Grant Applications (SGA) consists of five parts. Part I provides the background and objectives of the Farmworker Housing Assistance Program. Part II identifies allowable housing services. Part III describes the content of the technical proposal and the selection criteria used in reviewing proposals. Part IV sets forth the application process. Part V describes the reporting requirements.

Part I—Background

To meet the problems of agriculture-related underemployment and unemployment, the Congress has directed the Secretary of Labor to establish employment and training programs specifically for migrant and seasonal farmworkers. Under section 402 of the Job Training Partnership Act (JTPA), the Department of Labor (DOL or the Department) provides employment, training and supportive services to eligible migrant and seasonal farmworkers and their families in the conterminous forty-eight (48) States, the State of Hawaii, and the Commonwealth of Puerto Rico.

In accordance with the intent of Congress and JTPA section 402(c)(3), the services include, but are not limited to, classroom training, on-the-job training, work experience, job search assistance, counseling, job development, relocation assistance, training-relating and non-training-related supportive services. Among the services provided over the years has been farmworker housing assistance.

The Department awarded six grants in Program Year (PY) 1994, for farmworker housing assistance. Some of the grant recipients have operated farmworker housing assistance programs, while others have served chiefly as facilitating

agents who provide assistance in planning, grantsmanship and management of housing operations to agencies and organizations chartered to assist farmworker families with either temporary rental housing or new construction for permanent residency and ownership.

Many of the organizations funded by the Department of Labor provide assistance and services to farmworker communities within their service delivery areas, while others serve farmworker communities confined to small residential pockets within and extending over large geographical regions. In some instances, these service areas have extended over several contiguous States.

In calling for grant applications, the Department is not limiting or suggesting specific geographic regions as service areas for the implementation of farmworker housing assistance programs. In making the award(s), the Department will take into consideration the needs of the eligible migrant and seasonal farmworkers throughout the conterminous forty-eight (48) States, the State of Hawaii, and the Commonwealth of Puerto Rico which may result in the award of up to six grants.

The Department will consider applications from regional consortia or applications that feature subgrant arrangements for specified geographic regions. Inasmuch as some grant applications may contain proposed service areas which overlap the service areas of the other prospective grantees, the Department reserves the right to negotiate the proposed service area with each prospective grantee in order to maximize the number of farmworkers to be served.

Organizations are discouraged from competing for more than one geographic area of the country. Preference will be given to those organizations demonstrating prior farmworker housing experience within the proposed service area.

Overall Objectives

As this farmworker housing grant program continues into a new program year, there will be an increased emphasis on efficiency, cost effectiveness and measurable outcomes.

Part II—Statement of Work

This Statement of Work sets forth the objectives, general specifications, and conditions for providing farmworker housing assistance during the 12-month Program Year 1998 grant period.

The Department recognizes that all of the activities listed below may not be necessary for a prospective grantee's proposed service area. Accordingly, prospective grantees should include appropriate justification for not including particular activities in their proposals. The desired activities sought under this solicitation should address all of the following areas:

A. Farmworker Housing Technical Assistance

—Providing technical assistance to agencies or organizations specifically chartered to provide local assistance to farmworkers seeking permanent or temporary housing.
—Providing technical assistance and training to agencies and organizations concerning legislative and regulatory changes affecting farmworker housing programs, applications and funding.

B. Farmworker Housing Rehabilitation

—Providing assistance either directly to eligible farmworkers or indirectly to agencies or organizations engaged in the provision of housing services to farmworkers with regard to housing rehabilitation through Community Development Block Grants and other applications; target area identification for program activities; program design for farmworker housing rehabilitation services; assuring farmworker community participation; performing environmental reviews prior to rehabilitation activities; program design and administration.
—Providing assistance with weatherization of farmworker housing; assisting in either conducting outreach farmworker eligibility certification or training agencies and organization on ''how to'' engage in the same; providing assistance with actual weatherization, program administration, client identification, the preweatherization process involving applications, work writeups, bid process, contract negotiations, monitoring and fund disbursements.

C. Farmworker Single Family Housing Assistance

—Providing either direct assistance to individuals and communities or indirect assistance through the provision of technical assistance and training regarding the following:

1. Preparation of Farmers Home Administration (FmHA) 523 applications for self-help technical assistance grants; securing land and recruiting eligible farmworker families; developing housing plans, specifications and cost estimates.

2. Site development, including site identification and acquisition, engineering selection, preliminary mapping, zoning and planning reviews, FmHA site review and contractor selection.

3. FmHA 502 Single Family Loans, including outreach and eligibility determination of farmworkers, loan packaging and filing, training on the FmHA review process and finally on the loan award and closing.

4. Construction (all aspects), ownership and family accounting; and local program management.

D. Farmworker Rental Housing Development Assistance

—The provision of assistance either directly to farmworkers or indirectly through training and technical assistance to agencies and organizations chartered to assist farmworkers in developing or obtaining rental housing through FmHA 514, 515 and 516 programs.
—Through the provision of assistance in the following areas related to rental housing: Sponsor development and incorporation; housing surveys and market analyses; site identification and property acquisition; architectural selection; involvement starting pre-application and continuing through approval; zoning permits acquisition; development of management plans; advertising for bids on construction through the loan/mortgage, closing, and rental process.

E. Sewer and Water for Farmworker Housing

—Assisting agencies and organizations engaged in the development and provision of assistance of farmworkers seeking either temporary or permanent housing as it applies to water and sewer lines.
—Providing technical assistance in the following associated areas: Project identification, needs assessment, preliminary applications, engineering selection, land acquisition, easement, district formation, design, final applications and letters of conditions, hookup funding, environmental reviews, bidding and contract negotiations, construction, grants management, board training, revenue and budget management and finally operation and maintenance training.

F. Farmworker Housing Counseling

—The grant recipient(s) will engage in training and provide technical assistance to organizations working with farmworkers, or directly to farmworkers providing counseling concerning the following issues as they apply to home ownership: ownership rights and responsibilities,

effects of mortgage payment delinquency and default, preoccupation, referrals for other forms of assistance along with foreclosure assistance.

G. New Housing Program Development

—Will provide training to agencies and/or organizations chartered to assist farmworkers obtain housing ownership, or directly to farmworkers with regard to building coalitions that will aid home ownership, researching resources, developing new farmworker housing programs and how to network with other farmworker housing organizations and housing programs for the mutual benefit of all concerned.

In listing these activities, the Department recognizes that all of the activities may not be necessary for a prospective grantee's proposed service area. Accordingly, prospective grantees should include appropriate justification for not including any of these activities in their proposal.

Part III—Contents of Technical Proposals and Rating Criteria

1. Technical Capability of Contractor

The technical proposal should document the applicant's capacity to develop a technical approach which accomplishes the objectives described in the Statement of Work (See Part II, above).

An application submitted by a consortium of farmworker housing agencies/organizations, or which involves a sub-grantee arrangement, should detail the arrangements between the parties. Further, the application must explain how these arrangements will strengthen the overall technical capabilities of the applicant. Total of 20 Points.

2. Administrative Capability

In reviewing this criterion, the reviewers will consider the applicant's qualifications in terms of relevant experience, facilities and other resources. Applicant should describe their experience providing farmworker housing technical assistance in order to illustrate their skills and their ability to administer a grant under the MSFW housing program. An application which is submitted by a consortium or which involves a sub-grantee arrangement shall describe how the program components would be linked, administered, and monitored, and how the applicant would provide oversight and assure that goals are met. The applicant must document its experience by providing the Department of Labor with the name(s) and telephone number(s) of any entity which has awarded funds to the applicant for the administration of farmworker housing assistance program(s). Furthermore, the proposal should include a staffing chart which lists name, qualifications and pertinent experience of each key staff person, along with amount of time each such staffer would spend on the project if involved less than full-time. Total of 20 Points.

3. Program Design

In reviewing this criterion, the reviewers will consider the applicant's description of the following:

(a) The proposed service area, providing the rationale for the service area proposed (e.g. the State(s) or political subdivision to be served).

(b) The main problems relating to farmworker housing in the targeted area(s); how the problems have been identified and how the proposed activities will address and resolve them.

(c) The housing activities (See Part II, above) that the applicant plans to undertake, and the rationale for selecting those activities. The applicant should relate each proposed activity to the problems affecting farmworkers in the identified geographic areas within the proposed overall service area.

The applicant shall set measurable (quantifiable) goals for each activity identified, covering each quarter within the program year (funding period). The Department will consider this information during grant negotiations and will incorporate it into the grant award documents. The applicant should include in this section an itemized annual budget indicating personnel and all other administrative costs to be charged to the grant. Proposed expenditures must be consistent with and fully supported by the proposed housing activities. Total of 50 Points.

4. Linkages & Coordination

In reviewing this criterion, the reviewers will consider the applicant's description of the following:

Any and all linkages that the applicant (be it a single applicant, a consortium or an applicant with sub-grantee arrangements) has established within the identified service area to further the proposed farmworker housing assistance activities. The applicant should identify and demonstrate (including letters of support) linkages with farmworker organizations and JTPA, section 402, employment and training recipients and effected farmworker communities, and any organizations chartered to provide services and assistance to farmworks in the designated service area of the proposed housing assistance program. Additionally, the applicant should describe how these linkages will benefit the program. Total of 10 Points.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications, as well as to negotiate proposed service areas. Applications may be rejected where the information required is not provided in sufficient detail to permit adequate assessment of the proposal.

The final decision on the award(s) will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. This determination will include an assessment of the need for farmworker assistance in seeking and securing both temporary and permanent housing throughout the conterminous forty-eight (48) States, the State of Hawaii, and the Commonwealth of Puerto Rico.

Part IV—Application Process

A. Eligible Applicants

Eligible applicants for grant funds under this SGA include public organizations and private nonprofit organizations authorized by their charters or articles of incorporation to provide housing assistance services to the migrant and seasonal farmworker community. Entities described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq,* prohibits the award of federal funds to 501(c)(4) entities engaged in lobbying activities.

B. Application Procedures

(1) Submission of Proposal

All instructions and forms required for submittal of applications are included in this announcement.

The application package shall consist of two (2) separate and distinct parts. Part I, The Financial Proposal and Part II, the Technical Proposal. The Financial Proposal, Part I, shall contain the SF–424. ''Application for Federal Assistance'' (Attachment No. 1) and SF424–A, ''Budget'' (Attachment No. 2). The Catalog of Federal Domestic Assistance Number is 17.247. The budget shall include on separate page(s) a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each cost category.

The technical proposal, Part II, shall demonstrate the applicant's capability to provide the services described in this announcement. Applicants should

describe the proposed technical approach including phasing of tasks and scheduling of time and personnel. Under Program Design (See Part III (3)(c), above), we request the submission of a budget to accompany the technical proposal.

In addition, the Technical Proposal shall be limited to (fifty) 50 doubled spaced, single-side, 8.5 inch × 11 inch pages with 1 inch margins. Appendices shall not exceed twenty (20) pages. Text type shall be 12 point or larger. Applications not meeting these requirements may not be considered. The Technical Proposal must also contain activity and outcome information.

(2) Hand-Delivered Proposal

Proposals may be mailed or delivered by hand. Hand delivered proposals will be accepted if they are received by 2 p.m., Eastern Standard Time on May 18, 1998. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Grant applications transmitted by electronic mail, telegraph, facsimile and/or faxed will not be honored. Failure to adhere to the above instructions will be a basis for determining that an application is non-responsive.

(3) Late Proposals

Any proposal not reaching the designated place, by the specified time and date of the delivery requirements will not be considered, unless it is received before the award is made and was either:

(a) Sent by U.S. Postal Service registered or Certified mail not later than the fifth (5th) calendar day before the date specified for receipt of application; or

(b) Sent by U.S. Postal Service Express Mail Next Day Service—Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent by either Express Mail or U.S. Postal Service Registered, Certified Mail is the U.S. Postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing.

Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope.

(4) Period of Performance

The period of performance will be 12 months beginning July 1, 1998, and continuing through June 30, 1999.

(5) Option to Extend

The Department reserves to extend this grant for an additional one or two years, based on the availability of funds, a grantee's success in completing work under this SGA, and the needs of the Department.

Part V—Reporting Requirements

Recipients of grants under this solicitation will be required to submit reports, as set forth below, to the Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor.

A. Quarterly Reports

Three copies of the first quarterly report will be due 45 days after the first three months of program operation, and should reflect program activities and financial outlays. The reports will record and measure agreed-upon activities in quantifiable terms, providing a means by which performance under the grants can be evaluated. Subsequent reports will be due on a quarterly basis and will follow the format and content of the first such report. Additional and more specific items and forms will be shared at the time of grant negotiations.

B. Final/Annual Status Reports

The Grant Recipient shall submit three copies of a report which summarizes the grantee's activities under this grant during the program year, within 45 days after the end of the program year.

Signed at Washington, DC. this 26th day of March, 1998.

James C. De Luca,

Grant Officer, Office of Grants and Contract Management, Division of Acquisition and Assistance.

Attachments

1. Appendix A—''Application for Federal Assistance'' (Standard Form 424)

2. Appendix B—''Budget Information—Non-Construction Programs'' (Standard Form 424–A)

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1._____	$_____	$_____	$_____	$_____
2._____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 98–8494 Filed 3–31–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Certificate of Training, MSHA Form 5000–23 and 5000–23T

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Certificate of Training, MSHA Form 5000–23 and new optional Certificate of Task Training, MSHA Form 5000–23T. MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before June 1, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvery@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 115(a) of the Mine Act requires that each mine operator have a program approved by the Secretary for training miners in the health and safety aspects of mining. Section 115(c) requires (a) that the mine operator certify on a form approved by the Secretary that the miner has received the specified training in each subject area of the approved health and safety training plan; (b) that the certificates be maintained by the operator and be available for inspection at the mine site; and (c) that the miner is entitled to a copy of the certificate upon completion of the training and when he leaves the operator's employ. Title 30, CFR Part 48 implements Section 115 of the Act by setting forth the requirements for obtaining approval of training programs and specifying the kinds of training, including refresher and hazard training, which must be provided to the miners.

II. Current Actions

MSHA Form 5000–23, Certificate of Training, is used by mine operators to record mandatory training received by miners. The proposed MSHA Form 5000–23T, Certificate of Task Training, would be used by mine operators to record mandatory task training received by miners. Each form provides the mine operator with a recordkeeping document, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance requirement.

Type of Review: Revision.

Agency: Mine Safety and Health Administration.

Title: Certificate of Training, MSHA Form 5000–23, and Certificate of Task Training, MSHA Form 5000–23T.

OMB Number: 1219–0070.

Agency Number: MSHA Form 5000–23 and MSHA Form 5000–23T.

Recordkeeping: Two years or 60 days after termination of employment.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
48.9 and 48.29	13,763	Annually	633,098	0.08	20,204
Total	13,763	Annually	633,098	0.08	20,204

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $6,331.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 27, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–8547 Filed 3–31–98; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[98–044]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: Thursday, May 7, 1998, 8:30 a.m. to 6:00 p.m.; and Friday, May 8, 1998, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, Room MIC 7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Rhome, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1490.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Subcommittee Summary Reports
—Office of Life and Microgravity Sciences and Applications (OLMSA) Overview
—Commercialization and Privatization, Management, Allocation, and Pricing of International Space Station (ISS) Resources
—Strategic Performance Goals for OLMSA
—Access to Space
—Astronaut Health Care and Biomedical Research Policy
—Dissemination of Research Results
—Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 26, 1998.

Matthew M. Crouch.

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–8496 Filed 3–31–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Space Planning at the National Archives and Records Administration

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: This notice provides information on NARA's space planning initiative and provides information on where the public may obtain information on this initiative and provide comments to NARA.

NARA is beginning a planning effort that will analyze our current configuration of facilities and determine what kinds of facilities we should have and where they should be located to best serve all our customers and protect the records. This project will happen in several phases over many months and will focus on options that enhance access to records, improve space quality, increase space quantity, and reduce space costs.

DATES: NARA seeks public input into this process. No option, no matter how cost-efficient, will be worth pursuing if it does not further our goal of making it easier for researchers to access the records they need. And no matter what option is decided upon, NARA is committed to maintaining, at a minimum, microfilm research rooms with Internet-accessible computer terminals in the metropolitan areas where regional archives now exist.

Over the course of this planning effort, we will be reaching out to our broad spectrum of customers to get their input through public meetings, surveys, conferences, publications, and the Internet on such issues as where records should be located, what services you need, and what amenities should be offered. All comments and suggestions should be submitted by July 1, 1998.

ADDRESSES: We have a web page devoted to progress on our space plan at <http://www.nara.gov/nara/spceplan.html>. In addition, we welcome your comments and suggestions via e-mail at space.plan@arch2.nara.gov or by mail to Space Planning Team, Room 4100 (NPOL), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Dated: March 25, 1998.

Richard Claypoole,

Assistant Archivist for Regional Records Services.

[FR Doc. 98–8471 Filed 3–31–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts Combined Arts Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, advisory panel to the National Council on the Arts, will be held on April 16–17, 1998. The panel will meet from 9:00 a.m. to 5:00 p.m. on April 16, and from 9:00 a.m. to 3:00 p.m. on April 17, in Room M–09 the Nancy Center, 1100 Pennsylvania Avenue, NW., Washington, D.C., 20506.

The meeting will be open to the public on a space available basis. Topics tentatively will include discussion of agency structure and process. If, in the course of discussion, it becomes necessary for the Panel to discuss non-public commercial or financial information of intrinsic value, the Panel will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Panel in closed session in accordance with subsection (c)(6) U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contract the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: March 26, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–8497 Filed 3–31–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Panel—Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–473), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (Millenium/Literature Section) to the National Council on the Arts will meet

on April 8, 1998. The panel will convene by teleconference from 2:00 p.m. to 3:00 p.m. The teleconference will be held in Room 729 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants.

In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4) and (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: March 27, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–8618 Filed 3–31–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

[CFDA NO. 84.257I]

Literacy Leader Fellowship Program

AGENCY: National Institute for Literacy.

ACTION: Notice of Invite.

Purpose of Program: The Literacy Leader Fellowship Program is designed to provide Federal financial assistance to adult learners and to individuals pursuing careers in adult education or literacy in the areas of instruction, research, or innovation. Under the program, literacy workers and adult learners are applicants for fellowships.

Deadline for Transmittal of Applications: Applications must be received at the National Institute for Literacy no later than 5 p.m. May 27, 1998.

Available Funds: $100,000.

Estimated Range of Awards: $30,000–$50,000.

Estimated Average Size of Awards: $33,000.

Estimated Number of Awards: 3.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period: Projects will be not less than three and no more than 12 months of full or part-time activity. Projects will begin no earlier than September 1998, and end no later than September 1999.

Applicable Regulations: The regulations governing the National Institute for literacy is Leader Fellowship Program has been published in the June 25, 1997 issue of the **Federal Register**. The regulations are also available on-line at http://www.nifl.gov/activities/fllwhome.htm.

While the Institute is administered by an Interagency agreement with the U.S. Departments of Education, Labor, and Health and Human Services, the specific policies and procedures of these agencies regarding rulemaking and administration of grants are not adopted by the Institute except as expressly stated in this Notice and in the regulations.

Transmittal of Applications: An original and seven (7) copies of applications for award must be received by the Institute on or before the deadline date of May 27, 1998.

Applications delivered by mail: Applications sent by mail must be addressed to National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006, Attention: (CFDA#84.257I).

An applicant is encouraged to use registered, certified, or first-class mail.

Late applicants will be notified that their applications will not be considered, and their applications will be returned.

Applications delivered by Hand: Applications that are hand-delivered must be taken to the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC.

The Institute will accept hand-delivered applications between 8:30 a.m. 5:00 p.m. (Washington, DC time) daily, except Saturday, Sundays and Federal holidays. Applications that are hand-delivered will not be accepted by the Institute after 5:00 p.m. on the due date.

Applications that are hand-delivered will not be accepted by the Institute after 5:00 p.m. on the due date.

Acknowledgment of Applications: The Institute will mail an Applicant Receipt Acknowledgment to each applicant within 15 days from the due date. If an applicant fails to receive the application acknowledgment, call the National Institute for Literacy at (202) 632–1525.

The applicant must indicate on the outside of the envelope the CFDA number of the competition under which the application is being submitted.

Application Forms: Applicants are required to submit the following forms, assurances and certifications:

(a) Application Information and budget Summary (NIFL Form No. 001)
(b) Assurances—Non-Construction Programs (Standard Form 424B)
(c) Certification Regarding Lobbying: Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
(d) Disclosure of Lobbying Activities (Standard Form LLL) (if applicable); and
(e) Certification of Eligibility for Federal Assistance in certain Programs (ED 80–0016)

The NIFL form, assurances, and certifications must each have an original signature. No award can be made unless these forms are submitted.

Prescribed Format: (a) Applicants will also be required to submit a proposal narrative. The narrative should be no more than 8 pages in length.

(b) The narrative format should meet the following criteria:

(i) The application should be double spaced
(ii) The application should use 12 point font
(iii) The application should have one inch margins on all four sides

(c) Applicants should also submit a resume, budget narrative, and four letters of recommendation.

Prescribed Order: Applicants should arrange their application submission in the following order:

i. NIFL Form 001
ii. Budget Narrative
iii. Application Narrative
iv. Resume
v. Letters of Recommendation
vi. Standard Form 424
vii. ED 80–0013
viii. Standard Form LLL (if applicable)
ix. ED 80–0016

Priorities: (a) The Director invites applications for Literacy Leader Fellowships that meet the following priorities for 1998.

(b) The priorities for 1998 are major areas of concern in the literacy field that are currently being addressed in the Institute's work.

(c) An application may be awarded up to 5 bonus points for addressing a priority or priorities, depending on how well the application meets the priority or priorities.

(d) The publication of these priorities does not bind the Institute to fund only applications addressing priorities. The Director is especially interested in fellowship applications that address one or more of the priorities, but not to the exclusion of other significant issues that may be proposed by applicants.

(e) The priorities selected from the regulations for 1998 are as follows:

(1) *Developing Leadership in Adult Learners:* Because Adult learners are the true experts on literacy, they are an important resource for the field. Their firsthand experience as ''customers'' of the literacy system can be invaluable in assisting the field in moving forward, particularly in terms of raising public awareness and understanding about literacy. Projects that enhance best practices or the adult learner network will be given priority consideration.

(2) *Expanding the Use of Technology in Literacy Programs.* One of the NIFL's major projects is the Literacy Information and Communication System (LINCS), an Internet based information system that provides timely information and abundant resources to the literacy community. Keeping the literacy community up to date in the information age is vital. Projects that improve or increase use of technology will be given priority consideration.

(3) *Improving Accountability for Literacy Programs.* Legislation that has passed both houses of the U.S. Congress emphasizes that literacy programs must develop accountability systems that demonstrate their effectiveness in helping adult learners contribute more fully in the workplace, family and community. Projects that focus on results-oriented literacy practice, especially as related to the Equipped for the Future (EFF) framework, are a priority.

(4) *Raising Public Awareness about Literacy.* The NFL is leading a national effort to raise public awareness that literacy is part of the solution to many social concerns, including the well-being of children, health, welfare and the economy. Projects that enhance this effort will be given priority consideration.

SUPPLEMENTARY INFORMATION: National Educational Goal 6, which is included in the Goals 2000: Educate America Act, puts forward an ambitious agenda for adult literacy and lifelong learning in America. To further this goal, the Congress passed Public Law 102–73, the National Literacy Act of 1991, which is the first piece of national legislation to focus exclusively on literacy. The overall intent of the Act, as stated, is:

> To enhance the literacy and basic skills of adults, to ensure that all adults in the United States acquire the basic skills necessary to function effectively and achieve the greatest possible opportunity in their work and in their lives and to strengthen and coordinate adult literacy programs.

In designing the Act, among the primary concerns shared by the Congress and literacy stakeholders was the fragmentation and lack of coordination among the many efforts in the field. To address these concerns, the Act created the National Institute for Literacy to:

(A) Provide a national focal point for research, technical assistance, and research dissemination, policy analysis and program evaluation in the area of literacy; and

(B) Facilitate a pooling of ideas and expertise across fragmented programs and research efforts.

Among the Institute's authorized activities is the awarding of fellowships to outstanding individuals who are pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation. These fellowships are to be awarded for activities that advance the field of adult education and literacy.

FOR FURTHER INFORMATION CONTACT: To receive an application or for further information, contact Julie Gedden, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone: 202/632–1515, Fax: 202/632–1512. E-mail: jgedden@nifl.gov. Information about the Literacy Leader Fellowship program is also available on-line (including many of the required forms) at http://www.nifl.gov/activities/fllwhome.htm

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 3430–0003, Expiration Date 6/30/2000. The time required to complete this information collection is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

Program Authority: 20 U.S.C. 1213c.

Dated: March 27, 1998.

Sharyn Abbott,

Executive Officer, National Institute for Literacy.

[FR Doc. 98–8548 Filed 3–31–98; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Private Fuel Storage, LLC; Establishment of Atomic Safety and Licensing Board

[Docket No. 72–22–ISFSI–PSP; ASLBP No. 97–732–02–ISFSI–PSP]

Pursuant to the authority contained in 10 CFR 2.721, a separate Atomic Safety and Licensing Board, due to the multiplicity of issues in the captioned proceeding, is hereby appointed to consider and rule on all matters concerning the physical security plan of applicant Private Fuel Storage, LLC. The existing Licensing Board shall retain jurisdiction over all other issues relating to the pending Private Fuel Storage application for authorization to construct and operate an independent spent fuel storage installation in Skull Valley, Utah.

The new Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials concerning physical security plan matters within the purview of this Board shall be filed with these Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 26th day of March 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–8544 Filed 3–31–98; 8:45 am]

BILLING CODE 7590–01–p

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–387]

Pennsylvania Power and Light Company; Susquehanna Steam Electric Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–14, issued to Pennsylvania Power and

Light Company (the licensee), for operation of the Susquehanna Steam Electric Station, Unit 1, located in Luzerne County, PA.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the Technical Specifications for the unit to permit the use of ATRIUM™–10 fuel in the reactor. The changes include core flow dependent minimum critical power ratio (MCPR) Safety Limits in Sections 2.1.2 and 3.4.1.1.2, addition of Siemens Power Corporation (SPC) methodology topical report references in Section 6.9.3.2, changes in Section 5.3.1 to reflect new fuel design features, changes in definitions in Section 1 to reflect the new fuel design, and changes to the Bases to correspond to the above changes as appropriate.

The proposed action is in accordance with the licensee's application for amendment dated August 26, 1997, as supplemented December 4, 1997, and February 2, 1998.

The Need for the Proposed Action

The proposed action will enable the licensee to complete its maintenance and refueling outage on this unit and begin a new fuel cycle, with a portion of the core consisting of the new higher enriched, ATRIUM™–10 nuclear fuel. Use of higher fuel enrichment will give the licensee the flexibility to extend fuel irradiation and operate for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that it is acceptable. The safety considerations associated with the use of the ATRIUM™–10 fuel in the Susquehanna Steam Electric Station, Unit 1, have been evaluated by the NRC staff and the staff has concluded that this change in the reactor fuel design would not adversely affect plant safety. The proposed change to the fuel design has no adverse effect on the probability of any accident previously analyzed. The increase in fuel enrichment from 4.0 percent versus 4.5 percent for an increased fuel cycle of 24 months results in an increase in the projected maximum burnup rate or discharge exposure from the current 45 to 48 MWd/kgU (or 45 to 48 GWd/MT). This increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. There are no changes in the type or amounts of routine radiological effluents. There is no increase in individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation.'' This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 GWd/MT are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed increase in the allowable exposure of SPC ATRIUM™–10 fuel for Susquehanna, Unit 1 since the proposal involves 4.5 percent enrichment and burnup of 48 GWd/MT. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed change in the fuel exposure limit and the use of the new fuel design.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would result in reduced operational flexibility. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement, dated June 1991, for the Susquehanna Steam Electric Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on March 12, 1998, the staff consulted with the Pennsylvania State official, D. Ney of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 26, 1997, as supplemented by letters dated December 4, 1997, and February 2, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 26th day of March 1998.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8545 Filed 3–31–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23086; 812–10984]

Donaldson, Lufkin & Jenrette Securities Corporation; Notice of Application

March 26, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section

14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Donaldson, Lufkin & Jenrette Securities Corporation (''DLJ'') requests an order with respect to the Trust Enhanced Dividend Securities (''TRENDS'') trusts and future trusts that are substantially similar to the TRENDS trusts and for which DLJ will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under sections 3(c)(1) and (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt from Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from DLJ at the time of a Trust's initial issuance of Securities.

FILING DATES: The application was filed on January 30, 1998, and amended on March 24, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving DLJ with a copy of the request, personally or by mail. Hearing should be received by the SEC by 5:30 p.m. on April 16, 1998, and should be accompanied by proof of service on DLJ, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. DLJ, 277 Park Avenue, New York, New York 10172.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. DLJ will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are no affiliated with either the relevant Trust or DLJ. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holders *pro rate interest in the Shares or amount received by the Trust under the Contracts.*[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the National Association of Securities Dealers Automated Quotation System. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. DLJ currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have no power to vary the investments held by each Trust. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as paying agent, registrar, and transfer agent with respect to the Securities of each Trust. The bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by DLJ or the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of a default under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other defaults provided for in the Contract, the obligations of the counterparty under the Contract will be accelerated and the available proceeds of the Contract will be distributed to the Security Holders.

7. The trustees of each Trust will be selected initially by DLJ, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding

[1] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities'' [4] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by DLJ, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be DLJ).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. DLJ believes, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, that it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. DLJ states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, DLJ asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, DLJ argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). DLJ requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. DLJ states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. DLJ also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. DLJ believes that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, DLJ argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. DLJ also believes that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. DLJ believes that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by DLJ or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. DLJ asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by DLJ, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. DLJ believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, DLJ assets that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. DLJ believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from

[4] *A majority of the Trust's outstanding Securities* means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. DLJ argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. DLJ believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. DLJ states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, DLJ states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. DLJ also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. DLJ requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). DLJ believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from DLJ.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. DLJ requests an exemption from sections 17(a) (1) and (2) to permit the Trusts to purchase Treasuries from DLJ.

3. DLJ states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. DLJ argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. DLJ argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. DLJ states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. DLJ also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. DLJ argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. DLJ believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

DLJ agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designated to provide that the conditions set forth below have been complied with; (i) will make and approve such changes as are deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from DLJ, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other renumeration to be received by DLJ will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8477 Filed 3–31–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39805; File No. SR–AMEX–98–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Distribution of Amendments to Characteristics and Risks of Standardized Options

March 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1935 (''Act''),[1] notice is hereby given that on March 19, 1998, the American Stock Exchange, Inc. ''(Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 926 to permit members and member organizations to distribute amendments to the current Options Disclosure Document[2] only to those account holders affected by the amendment.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

From the commencement of options trading until 1982, Federal securities laws required that a current prospectus of the issuer, The Options Clearing Corporation (''OCC''), be delivered to prospective options investors. In 1982, the Commission recognized that the prospectus, which included detailed information about OCC in order to meet the registration requirements of the Securities Act of 1933, had become a complicated and lengthy document and in response, adopted Rule 9b–1 under the Act.[3] Thereafter, on April 30, 1986, the Exchange received Commission approval to consolidate its then existing multiple options disclosure documents into a single document entitled Characteristics and Risks of Standardized Options (the ''Options Disclosure Document'') for distribution to each options customer as required by Rule 9b–1 of the Act[4] and Exchange Rule 926. Rule 926 requires that the Options Disclosure Document be delivered to each customer at or prior to the time such customer's account is approved for options trading. Recognizing that the Options Disclosure Document would be amended from time to time, the Rule also requires that the amended Options Disclosure Document be distributed to individuals continuing to engage in options transactions.

The Exchange now proposes to amend Rule 926 to permit members and member organizations to distribute amendments to the Options Disclosure Document only to those customers who engage in transactions in the products discussed in the amendment. For example, in October 1996 the Options Disclosure Document was amended to accommodate the introduction of flexibly structured stock options (known as E–FLEX options). Prior to the consolidation of options disclosure documents in 1986, such an amendment would be distributed only to those investors affected by the change (*i.e.*, those accounts approved for E–FLEX options transactions). However, under current Rule 926, the entire amended Options Disclosure Document was required to be distributed to every customer having an account approved for options trading (regardless of whether the account had been approved for E–FLEX transactions) or, in the alternative, distributed not later than the time a confirmation of an options transaction was delivered to each customer. Thus, the Options Disclosure Document was required to be distributed not only to customers who had participated in an E–FLEX option transaction, but to all customers including those who had not participated in E–FLEX option transactions and did not need the additional information discussed in the amendment. The Exchange believes such unnecessary distribution, in addition to being an expensive burden to the member firms, may cause confusion among customers.

The Exchange proposes to amend Rule 926 to prevent the unnecessary distribution of the amended Options Disclosure Document to customers who have not engaged in a transaction in the category of options to which the

[1] 15 U.S.C. 78s(b)(1).

[2] Amex Rule 926 defines current Options Disclosure Document as the most recent edition of such Document which meets the requirements of Rule 9b–1 promulgated under the Securities Exchange Act of 1934.

[3] Securities Exchange Act Release No. 19055 (September 16, 1982), 47 FR 41950 (September 23, 1982).

[4] Securities Exchange Act Release No. 23189 (April 30, 1986), 51 FR 17120.

amendment pertains. The proposed rule change will continue to require that members and member organizations provide customers engaged in options transactions with all necessary risk disclosure documentation in compliance with the requirements of Rule 9b–1 of the Act.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, and brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not became operative for 30 days from March 19, 1998, the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(e)(6) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–AMEX–98–13 and should be submitted by April 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8533 Filed 3–31–98; 8:45am]

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[5] The Commission notes that the proposed rule is substantively similar to the rules of other exchanges regarding the distribution of amendments to an Options Disclosure Document. *See* CBOE Rule 9.15(a); PHLX Rule 1029(a).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] CFR 240.19b–4(e)(6). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39804; File No. SR–CHX–98–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Registration Requirements

March 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 18, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to replace the current text of CHX Article VI, ''Restrictions and Requirements,'' Rule 2, ''Registration and Approval of Member and Member Organization Personnel,'' with a new Article VI, Rule 2 that will clarify which associated persons are required to register with, or be acceptable to, the CHX.

Copies of the proposed rule change are available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CHX Article VI, Rule 2 governs the registration and approval of member and member organization personnel and other associated persons. The proposed rule change is intended to clarify those persons who are required to register with the Exchange and those persons associated with a member or member organization that must be acceptable to the CHX. In this regard, the CHX's proposal retains a provision currently found in CHX Article VI, Rule 2 which states that every other employee (in addition to registered persons) and persons associated with a member or member organization must also be acceptable to the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] On March 18, 1998, the CHX amended its proposal to clarify the text of CHX Article VI, Rule 2. *See* Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Katherine A. England, Division of Market Regulation (''Division''), Commission, dated March 17, 1998 (''Amendment No. 11''). Specifically, Amendment No. 1 revises the CHX's proposal to state that registered persons, as defined in CHX Article VI, Rule 2(b), must register with the CHX.

The proposed rule change creates a defined term, ''registered persons,'' and requires that all persons within the definition register with the Exchange.[3] Proposed CHX Article VI, Rule 2(b), ''Definition of Registered Persons,'' defines the term ''registered persons'' as all persons associated with a member or member organization who are engaged or will be engaged in the securities business of a member or member organization, or the management of such securities business, including those persons whose functions include supervision, solicitation, conduct of business and training of other persons associated with the member or member organization for any of these functions.

In addition to the general definition, proposed CHX Article VI, Rule 2(b) also enumerates, without limitation, specific persons who are within the definition of registered persons. These persons include: (i) sole proprietors; (ii) officers; (iii) partners; (iv) principal stockholders (as defined in CHX Article II, Rule 4); (v) directors; (vi) branch office managers; (vii) nominees; (viii) representatives (including any persons performing the duties customarily performed by a salesperson or registered representative); (ix) persons whose functions include (a) underwriting, trading or sales of securities; (b) research or investment advice, other than general economic information or advice, with respect to the activities described in the preceding clause (a); and (c) activities other than those specifically mentioned that involve communication, directly of indirectly, with public investors in securities in connection with the activities described in the preceding clauses (a) and (b); and (x) persons listed on Schedule A, B, or C of a member's or member organization's Form BD.

Despite this broad definition of registered person, proposed CHX Article VI, Rule 2(c), ''Persons Exempt from Registration,'' carves out an exception from registration for those persons associated with a member or member organization (i) whose functions are solely and exclusively ministerial; or (ii) who are not actively engaged in the securities business.[4]

With regard to independent contractors associates with members and member organizations, the CHX notes that it has been the long-standing policy of the Commission to characterize and treat independent contractors whose actions are controlled by a member or member organization as employees for purposes of the Act.[5] This characterization and treatment applies irrespective of whether such persons might be deemed employees in an unrelated statutory context (*e.g.*, for purposes of IRS regulations). As such, an independent contractor, as well as any other person associated with a member or member organization, is required to register with the CHX if he or she falls within the definition of registered person.

The CHX also proposes to amend its rule by including in proposed CHX Article VI, Rule 2(d), ''Other Registration Requirements,'' a provision prohibiting members from making application for the registration of any associated person where there is no intent to employ such person in the member's securities business.[6] The CHX also proposes to amend Interpretation and Policy .01 to CHX Article VI, Rule 2 to state that revised Forms U–4 and BD must be forwarded promptly (*i.e.*, within 30 days) whenever information on those forms becomes inaccurate or incomplete.

The CHX acknowledges that there may be additional CHX rules which are meant to apply to persons associated with the member or member organization without explicit reference thereto. The Exchange currently is considering amendments to those rules.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–06 and should be submitted by April 22, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

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[3] *See* Amendment No. 1, *supra* note 2.

[4] Persons in this category may include, for example, senior officers in a division of a broker-dealer that does not participate in the member's securities business. Telephone conversation between Patricia L. Levy, Senior Vice President and General Counsel, CHX, and Yvonne Fraticelli, Attorney, Division, Commission, on March 13, 1998.

[5] *See* Letter from Douglas Scarff, Director, Division, Commission, to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., Dated June 18, 1982.

[6] The current version of CHX Article VI, Rule 2 contains the other requirements listed in proposed CHX Article VI, Rule 2(d). In general, these provisions include the requirements that members: (1) terminate their relationship with an associated person for whom the CHX has withdrawn or withheld registration or approval; (2) obtain CHX approval before allowing a person subject to a statutory disqualification to become associated with the member; (3) take reasonable care to determine the existence of a statutory disqualification prior to employing an associated person; and (4) promptly notify the CHX if an associated person becomes subject to a statutory disqualification.

[7] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8478 Filed 3–31–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39808; File No. SR–NYSE–98–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Trading of Bonds

March 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on March 13, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing an interpretation of Rule 85 (''Cabinet Dealings''). Specifically, pursuant to paragraph (b) of that rule, the Exchange is proposing to make convertible bonds eligible for trading in its Automated Bond System (''ABS''). Following such eligibility, all listed bonds will trade in ABS and the NYSE will close its bond trading Floor effective June 1, 1998.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 85(b) provides that the NYSE can designate ''those bonds to be dealt in by use of cabinets. * * *'' ABS, an automated trading system, is the ''cabinet'' trading system for bonds. Historically, only bonds that cannot convert into common stock have traded in ABS. Bonds convertible into common stock have not been designated as eligible for ABS; rather, they have traded on the bond Floor. Over time, trading activity has declined on the bond Floor, and it no longer is efficient to provide for the trading of convertible bonds on the Floor. Thus, to provide for more economic and efficient trading of bonds, this proposed rule change would make convertible bonds eligible for trading in ABS under Rule 85, allowing the Exchange to close the bond Floor. In addition, this will result in the availability of expanded quotation information in listed bonds. The Exchange has sufficient capacity in ABS to include these bonds in the system.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(5)[3] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b–4 thereunder.[5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–09 and should be submitted by April 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8534 Filed 3–31–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3355; Notice 2]

Red River Manufacturing, Inc.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

This notice grants the petition by Red River Manufacturing, Inc., of West Fargo, North Dakota (''Red River''), for a temporary exemption from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. The basis of the petition was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the petition was published on February 2, 1998, and an opportunity afforded for comment (63 FR 5416).

Red River manufactures and sells several types of horizontal discharge trailers. One type is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The other type is used to haul feed, seed, and agricultural products such as sugar beets and potatoes, from the fields to hoppers for storage or processing. Both the construction and agricultural trailers are known by the name ''Live Bottom.''

Standard No. 224 requires, effective January 26, 1998, that all trailers with a gross vehicle weight rating (GVWR) of 4536 Kg or more, including Live Bottom trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear impact guards*. Red River, which manufactured 265 Live Bottom trailers in 1996, has asked for an exemption of three years in order to develop a rear impact guard that conforms to Standard No. 223 and can be installed in compliance with Standard No. 224, while retaining the functionality and price-competitiveness of their trailers. In the absence of an exemption, it believes that approximately 50 percent of its work force would have to be laid off. Red River's gross revenues would decrease by an amount of between $4,000,000 to $5,000,000 (these revenues averaged $13,049,311 over its 1994, 1995, and 1996 fiscal years).

Present studies show that a retractable rear impact guard would likely catch excess asphalt and agricultural products as they were discharged into hoppers. Further, the increased cost of the Live Bottom, were it required to comply immediately, would likely cause contractors to choose the cheaper alternative of dump trailers. Finally, the increased weight of a retractable rear impact guard would significantly decrease the payload of the Live Bottom.

In mid 1996, Red River's design staff began exploring options for compliance with Standard No. 224. Through a business partner in Denmark, the company reviewed the European rear impact protection systems. Because these designs must be manually operated by ground personnel, they would not be acceptable to the applicant's American customers. Later in 1996, Red River decided to investigate powered retractable rear impact guards. The initial design could not meet the energy absorption requirements of Standard No. 223. The company is now investigating another design for retractable rear impact guards, which ''is being refined and analyzed.''

Red River believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Live Bottom ''can be used safely where it would be hazardous or impractical to use end dump trailers, such as on uneven terrain or in places with low overhead clearances.'' These trailers are ''valuable to the agricultural sector'' because of the advantages they offer in the handling of relatively fragile cargo. An exemption ''would have no adverse effect on the safety of the general public'' because the Live Bottom spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Live Bottom is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

In response to the **Federal Register** notice, one comment was received. Robert J. Crail of Knoxville, Tennessee, supported the petition.

Red River requested that the financial and production information that it provided with its petition be kept confidential because of the value it would afford competitors. NHTSA understands from Red River's attorney that the company's principal competitor in the manufacture of horizontal discharge trailers is Dan Hill & Associates, Inc. (''Dan Hill''). Dan Hill asked for and received a one-year exemption from Standard No. 224 on January 26, 1998 (63 FR 3784).

The fact that another manufacturer of a horizontal discharge trailer believes that it can comply with Standard No. 224 at the end of a one-year exemption supports the opinion of NHTSA engineers that conformance is feasible within a limited time frame. NHTSA has therefore concluded that Red River can achieve compliance of its horizontal discharge trailers within the same one-year period that another manufacturer of such trailers believes is reasonable. It is important that the public be afforded the protection that underride guards offer with no undue delay.

NHTSA is also mindful that a disparity in the duration of a temporary exemption could afford a competitive advantage to competing low volume manufacturers, causing hardship to one of them, and has therefore decided to consider that factor as well in its deliberations on Red River's petition. As noted above, Red River represented that, in the absence of an exemption, it might have to reduce its workforce by 50 percent, and that its gross revenues would decrease by $4,000,000 to $5,000,000. Gross revenues had averaged slightly over $13,000,000 in its 1994, 1995, and 1996 fiscal years. The comparable figures for Dan Hill are a reduction of 60 percent in workforce, and a decrease in gross revenues of $6,000,000. Gross revenues had averaged approximately $13,885,000 in the same fiscal years. Both manufacturers argued that immediate compliance would require such a rise in the price of their trailers that contractors would likely choose the cheaper alternative of dump trailers. Both manufacturers also explored the possibility of implementing systems designed in Europe. The principal difference between Red River and Dan Hill discernable to NHTSA is the number of horizontal discharge trailers that each manufactured in the year preceding the filing of their petitions, 265 by Red River and 86 by Dan Hill. These trailers represented 85 percent of Dan Hill's total production, and a somewhat lesser percent of Red River's (although NHTSA granted Red River confidential treatment to the total number of trailers it produces as well as a breakdown of the 265 trailers into construction and agricultural components, the data show that Red River manufactures substantially more horizontal discharge construction trailers than its direct competitor, Dan Hill). Granting Red River an exemption that would last two years longer than the exemption granted to Dan Hill might have the effect of providing Red River with an undue advantage, given the substantial similarity of their trailers, the modifications necessary to achieve compliance, and the financial condition of both companies. Thus, the facts, the equities, and motor vehicle safety all weigh towards granting Red River an exemption that does not last longer than the one granted to Dan Hill.

NHTSA notes that Red River's exemption request also covers a horizontal discharge agricultural trailer, a type that is not manufactured by Dan Hill. However, it does not appear that this type of trailer warrants a separate consideration or a longer exemption, given that Red River's petition states that ''the modifications required for agricultural Live Bottoms will be similar to those * * * [for] construction Live Bottoms.''

NHTSA has concluded that Red River has not made a convincing argument for an exemption of longer than one year. The petitioner describes its primary competition in terms of vehicle type as the ''steel end dump trailer'' which retails for about $7,000 less than the Live Bottom trailer. Red River has presented an estimated price increase range if compliance is to be achieved within one to two years, but has requested confidential treatment for it. While NHTSA cannot quote dollar figures for the estimated range of price increases, it can characterize the low end estimate as exceeding 10 percent of the retail price differential between steel end dump trailers and Live Bottoms. Such an increase would result ''in a projected loss of sales of approximately 10 percent.'' Given the 1996 base of 265 Live Bottoms, the estimated price increase were compliance to be required ''within one to two years'' could result, then, in a loss of 27 sales per year. NHTSA has concluded that this potential loss of sales does not constitute ''substantial economic hardship'' which would justify an exemption period that is longer than one year. The statute affords any manufacturer granted an exemption the right to apply for a renewal. If either Red River or Dan Hill discover that it requires further time for compliance, it may apply for an extension near the end of the exemption period.

NHTSA is in accord with Red River's public interest and safety arguments, that Live Bottoms possess advantages in certain uses over end dump trailers, and that much of its useful life is spent off the highway.

In consideration of the foregoing, it is hereby found that to require Red River Manufacturing, Inc., to comply immediately with 49 CFR 571.224, Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and that a one-year exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Red River Manufacturing, Inc. is hereby granted NHTSA Temporary Exemption No. 98–3 from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*, expiring April 1, 1999, applicable to Live Bottom horizontal discharge construction and agricultural trailers.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued: March 27, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–8514 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 19, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0757.

Regulation Project Number: LR–209–76 Final.

Type of Review: Extension.

Title: Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A.

Description: Section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 34,600.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (nonrecurring).

Estimated Total Reporting Burden: 8,650 hours.

OMB Number: 1545–0959.

Regulation Project Number: LR–213–76 Final.

Type of Review: Extension.

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

Description: Section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1226.

Regulation Project Number: FI–59–89 Final.

Type of Review: Extension.

Title: Proceeds of Bonds Used for Reimbursement.

Description: The rules require record maintenance by a state or local government or section 501(c)(3) organization issuing tax-exempt bonds (''Issuer'') to reimburse itself for previously-paid expenses. This recordkeeping will establish that the issuer had an intent, when it paid an expense, to later issue a reimbursement bond.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 2,500.

Estimated Burden Hours Per Recordkeeper: 2 hours, 24 minutes.

Estimated Total Recordkeeping Burden: 6,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–8473 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 24, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 1998 to be assured of consideration.

Special Request

In order to conduct the survey described below at the beginning of April 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 31, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–004–G.

Type of Review: Revision.

Title: 1998 First Quarter Automated 941 TeleFile Customer Survey.

Description: The 941 TeleFile automated customer satisfaction survey is part of the 1998 941 TeleFile Quality Measurement Plan and is designed as one means of evaluating the effective of the TeleFile system.

The system will be tested nationwide starting in April 1998. Businesses successfully filing their first quarter Federal return using 941 TeleFile will be invited to participate in a short automated customer survey. The survey requests information about satisfaction and whether the business filer would be willing to use the TeleFile system again.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,800.

Estimated Burden Hours Per Response: 1 minute.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 30 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–8474 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 24, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0057.

Form Number: IRS Form 1024.

Type of Review: Extension.

Title: Application for Recognition of Exemption Under Section 501(a).

Description: Organizations seeking exemption from Federal income tax under section 501(a) as an organization described in most paragraphs of section 501(c) must apply to IRS for a ruling letter. The information collected is used to determine whether the organization qualities for exempt status.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 4,718.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
1024, Parts I–III	52 hr., 51 min	2 hr., 17 min	3 hr., 14 min.
Part IV	1 hr., 40 min	47 min	52 min.
Schedule A	2 hr., 52 min	18 min	21 min.
Schedule B	1 hr., 40 min	18 min	20 min.
Schedule C	58 min	12 min.	13 min.
Schedule D	4 hr., 4 min	18 min	22 min.
Schedule E	1 hr., 40 min	18 min	20 min.
Schedule F	2 hr., 23 min	6 min	8 min.
Schedule G	1 hr., 55 min	6 min	8 min.
Schedule H	1 hr., 40 min	6 min	8 min.
Schedule I	5 hr., 30 min	30 min	37 min.
Schedule J	2 hr., 23 min	6 min	8 min.
Schedule K	3 hr., 21 min	6 min	10 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 219,350 hours.

OMB Number: 1545–0720.

Form Number: IRS Forms 8038, 8038–G and 8038–GC.

Type of Review: Extension.

Title: 1. Information Return for Tax-Exempt Private Activity Bond Issues (8038);

2. Information Return for Tax-Exempt Governmental Obligations (8038–G); and

3. Information Return for Small Tax-Exempt Government Bond Issues, Leases and Installment Sales (Form 8038–GC).

Description: Forms 8038, 8038–G, and 8039–GC collect the information that IRS is required to collect by Code section 149(e). IRS uses the information to assure that tax-exempt bonds are issued consistent with the rules of Internal Revenue Code (IRC) sections 141–149.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 14,500.

Estimated Burden Hours per Respondent:

Form	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
8038	2 hr., 35 min	2 hr., 41 min	16 min.
8038–G	6 hr., 2 min	7 hr., 37 min	16 min.
8038–GC	1 hr., 51 min	2 hr., 56 min	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–8475 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 26, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 1998, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1563.

Revenue Ruling Number: Revenue Ruling 98–1.

Type of Review: Extension.

Title: Limitations on Benefits and Contributions under Qualified Plans.

Description: This revenue ruling provides guidance on the limitations on benefits and contributions under section 415 of the Code as amended by section 1449 of the Small Business Job Protection Act of 1996, including various options an employer may elect when implementing the amendments.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 70,000.

Estimated Burden Hours per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 35,000 hours.

OMB Number: 1545–1578.

Revenue Procedure Number: Revenue Procedure 98–13.

Type of Review: Extension.

Title: Election to Treat Certain Revocable Trusts as Part of an Estate.

Description: The revenue procedure provides the procedure and requirements for making the section 646 election.

Respondents: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours per Respondent: 30 minutes.

Frequency of Response: Other (twice in total).

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1585.

Revenue Procedure Number: Revenue Procedure 98–15.

Type of Review: Extension.

Title: Reduced Interest Election for Deferred Estate Tax.

Description: This revenue procedure provides procedures for making an election under section 503 of the Taxpayer Relief Act of 1997 to reduce the rate of interest on estate taxes deferred under section 6166 of the Internal Revenue Code and to eliminate the deduction for interest paid on the deferred estate taxes.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,600.

Estimated Burden Hours per Respondent: 30 minutes.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: *3,300 hours.*

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–8476 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8282 and 8283

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8282, Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) and Form 8283, Noncash Charitable Contributions.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) (Form 8282) and Noncash Charitable Contributions (Form 8283).

OMB Number: 1545–0908.

Form Number: 8282 and 8283.

Abstract: Internal Revenue Code section 170(a)(1) and regulation section 1.170A–13(c) require donors of property valued over $5,000 to file certain information with their tax return in order to receive the charitable contribution deduction. Form 8283 is used to report the required information. Code section 6050L requires donee organizations to file an information return with the IRS if they dispose of the property received within two years. Form 8282 is used for this purpose.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Form 8282:

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hr., 11 min.

Estimated Total Annual Burden Hours: 4,180.

Form 8283:

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 1 hr., 56 min.

Estimated Total Annual Burden Hours: 2,895,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8443 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4224

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4224, Exemption From Withholding of Tax on Income Effectively Connected With the Conduct of a Trade or Business in the United States.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exemption From Withholding of Tax on Income Effectively Connected With the Conduct of a Trade or Business in the United States.

OMB Number: 1545–0165.

Form Number: 4224.

Abstract: Form 4224 is used by nonresident alien individuals or fiduciaries, foreign partnerships, or foreign corporations to obtain exemption from withholding of tax on certain types of income if that income is effectively connected with a U.S. trade or business. The IRS uses the information to determine if the exemption is proper.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 24,750.

Estimated Time Per Respondent: 46 min.

Estimated Total Annual Burden Hours: 18,810.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8444 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4768

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

OMB Number: 1545–0181

Form Number: 4768

Abstract: Form 4768 is used to request an extension of time to file an estate (and generation-skipping) tax return and/or to pay the estate (and generation-skipping) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 18,500.

Estimated Time Per Respondent: 1 hr., 11 min.

Estimated Total Annual Burden Hours: 22,015.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8445 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 966

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 966, Corporate Dissolution or Liquidation.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Dissolution or Liquidation.

OMB Number: 1545–0041.

Form Number: 966.

Abstract: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfer of property.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 26,000.

Estimated Time Per Respondent: 5 hr., 19 min.

Estimated Total Annual Burden Hours: 138,060.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8446 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4876–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4876–A, Election To Be Treated as an Interest Charge DISC.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as an Interest Charge DISC.

OMB Number: 1545–0190.

Form Number: 4876–A.

Abstract: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 6 hr., 22 min.

Estimated Total Annual Burden Hours: 6,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8447 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1128

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork ReductionAct of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1128, Application To Adopt, Change, or Retain a Tax Year.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear,Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application To Adopt, Change, or Retain a Tax Year.

OMB Number: 1545–0134.

Form Number: 1128.

Abstract: Section 442 of the Internal Revenue Code requires that a change in a taxpayer's annual accounting period be approved by the Secretary. Under regulation section 1.442–1(b), a taxpayer must file Form 1128 to secure prior

approval unless the taxpayer can automatically make the change. The IRS uses the information on the form to determine whether the application should be approved.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 13,000.

Estimated Time Per Respondent: 17 hr., 24 min.

Estimated Total Annual Burden Hours: 226,270.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8448 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5303

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5303, Application for Determination for Collectively Bargained Plan.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear,Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Collectively Bargained Plan.

OMB Number: 1545–0534.

Form Number: 5303.

Abstract: Form 5303 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The form provides the IRS with the information necessary to verify that the employer has a qualified plan and may make tax deductible contributions to it.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 35 hr., 4 min.

Estimated Total Annual Burden Hours: 87,675.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 26, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8449 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, and Reference Price for Calendar Year 1997

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1997 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the production of fuel from nonconventional sources under section 29.

DATES: The 1997 inflation adjustment factor, nonconventional source fuel

credit, and reference price apply to qualified fuels sold during calendar year 1997.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1997 is 2.0331.

CREDIT: The nonconventional source fuel credit for calendar year 1997 is $6.10 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1997 is $17.24. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuel sold in calendar year 1997.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—Thomas Thompson, CP:R:R:AR:E, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For the reference price—David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 622–3110 (not a toll-free number).

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 98–8555 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1998

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 1998 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 1998 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 1998 inflation adjustment factor and reference prices apply to calendar year 1998 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

INFLATION ADJUSTMENT FACTOR: The inflation adjustment factor for calendar year 1998 is 1.1240.

REFERENCE PRICES: The reference prices for calendar year 1998 are 4.95¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass. The reference price for electricity produced from closed-loop biomass, as defined in section 45(c)(2), is based on a determination under section 45(d)(2)(C) that in calendar year 1997 there were no sales of electricity generated from closed-loop biomass energy resources under contracts entered into after December 31, 1989.

Because the 1998 reference prices for electricity produced from wind and closed-loop biomass energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 1998.

CREDIT AMOUNT: As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1.¢ Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 1998 under section 45(a) is 1.7¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass and wind energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:DOM:P&SI:5, 1111 Constitution Ave., NW., Washington, D.C. 20224, (202) 622–3040 (not a toll-free call).

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 98–8554 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Wednesday and Thursday, April 29–30, 1998. The meeting will be held in Room 3313 of the Internal Revenue Service Main Building, which is located at 1111 Constitution Avenue, NW., Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting on April 29–30, 1998

Wednesday, April 29, 1998

9:00 Meeting Opens
11:30 Break for Lunch
1:00 Meeting Resumes
4:30 Meeting Adjourns for the Day

Thursday, April 30, 1998

9:00 Meeting Reconvenes
12:00 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Reporting OID Income on Treasury Obligations on Form 1099–OID
(2) Separate Reporting on Forms 1099–INT and 1099–OID of Investment Expenses Allocated to Holders of Stripped Mortgage Obligations
(3) Reporting of Payments Following an Employee's Death
(4) Student Loan Interest Reporting
(5) Guidance on Claiming Exemptions on Form W–4
(6) Form 1099–MISC Filing Educational Initiative
(7) Roth Individual Retirement Account (IRA) and Education IRA
(8) Revision of Form SS–8
(9) Reporting Settlement Payments Made to Attorneys
(10) Employer Authority to See and Copy the Social Security Card
(11) Reporting Notional Principal Contract Income
(12) Section 1441 Transition Rules for Existing Documentation
(13) Follow-up Discussion on Form W–2G Reporting for Slot Machine Payouts
(14) Follow-up Discussion on Disbursements to Contractors & Subcontractors and Escrow Fund Disbursements
(15) Follow-up Discussion on IRP Closing Agreements
(16) Follow-up Discussion on Reporting related to the Uniformed Services

Employment and Reemployment Rights Act of 1994 (USERRA)
(17) Follow-up on Form W–2c Requirement for Address Corrections
(18) Follow-up on Alternative Signatures
(19) Update on IRS Certifications for Real Estate Transactions
(20) Update on New Forms W–8
(21) Update on Qualified Intermediaries
(22) Martinsburg Computing Center Update—IRP Seminars & Electronic Filing
(23) Social Security Administration Update on Unmatchable Forms W–2

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC is currently comprised of 18 representatives from various segments of the information reporting payer community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the building access list, *notification of intent to attend this meeting must be made with Ms. Gloria Wilson no later than Friday, April 24, 1998. Ms. Wilson can be reached at 202–622–4393.* Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Wilson in a voice-mail message, please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Thomasine Matthews at 202–622–4214 on or after Monday, April 20, 1998, to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until Monday, April 20, 1998.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not the April 1998 meeting), please write to Kate LaBuda at IRS, Office of Payer Compliance, CP:EX:ST:PC, Room 2013, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, call Ms. Gloria Wilson at 202–622–4393. To have a copy of the agenda faxed to you on or after April 20, 1998, call Ms. Thomasine Matthews at 202–622–4214. For general information about IRPAC call Ms. Kate LaBuda at 202–622–3404.

Dated: March 26, 1998.

Kate LaBuda,

Acting Director, Office of Payer Compliance, Office of Examination.

[FR Doc. 98–8556 Filed 3–31–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Expert Scientific Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that a meeting of the VA Gulf War Expert Scientific Advisory Committee will be held on:

Monday, March 30, 1998, at 8:30 a.m.–5:00 p.m.

Tuesday, March 31, 1998, at 8:30 a.m.–12:00 noon

The location of the meeting will be 810 Vermont Avenue, N.W., Washington, D.C., Room 230.

The Committee's objectives are to advise the Under Secretary for Health about medical findings affecting Gulf War era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans' benefits and/or training aspects for patients and staff.

The agenda for March 30 will begin with an update of Gulf War Programs from various Veterans Service Organizations as well as presentations on: Patient Satisfaction Survey; Low Level Agent Exposure and Biological Effects; Characteristics of DoD Pre-Deployment Physicals; and Disability Ratings Among Gulf War Veterans. The first day's agenda will also cover follow-ups on VA Mortality Study and VA Referral Center Patients.

On March 31 the Committee will hear updates on the DoD/VA Programs in Leishmania; the Depleted Uranium Training Program; and Activities in Risk Communications. All portions of the meeting will be open to the public.

Additional information concerning these meetings may be obtained from the Executive Secretary, Office of Public Health & Environmental Hazards, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Due to unforeseen circumstances, this notice of meeting is being published late. Notice of availability of the Executive Summary of this meeting will be published in the **Federal Registry** in the near future.

Dated: March 26, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–8492 Filed 3–27–98; 1:01 pm]

BILLING CODE 8320–01–M

federal register

Wednesday
April 1, 1998

Part II

Environmental Protection Agency

40 CFR Part 52

Promulgation of Federal Implementation Plan for Arizona-Phoenix Moderate Area PM–10; Disapproval of State Implementation Plan for Arizona—Phoenix Moderate Area PM–10; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5987–8]

Promulgation of Federal Implementation Plan for Arizona—Phoenix Moderate Area PM–10; Disapproval of State Implementation Plan for Arizona—Phoenix Moderate Area PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking and withdrawal of 1996 proposed rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or ''the Act''), EPA today proposes a federal implementation plan (FIP) to address the moderate area PM–10 requirements for the Phoenix PM–10 nonattainment area. Specifically, for both the annual and 24-hour PM–10 standards, EPA is proposing a demonstration that reasonably available control measures (RACM) will be implemented as soon as possible, a demonstration that it is impracticable for the area to attain the standards by the statutory attainment deadline and a demonstration that reasonable further progress (RFP) is being met. Pursuant to a court order, EPA's final FIP must be signed by the EPA Administrator no later than July 18, 1998.

As part of its proposed RACM demonstration, EPA is proposing a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads, and is also proposing an enforceable commitment to ensure that RACM for agricultural sources will be proposed by September 1999, finalized by April 2000 and implemented by June 2000.

In addition, in today's document, EPA is withdrawing a 1996 proposal to restore its approval of the RACM, RFP and impracticability demonstrations in Arizona's moderate area PM–10 plan for the annual PM–10 standard for Phoenix and is proposing to disapprove the impracticability and RACM demonstrations because those demonstrations do not adequately address the CAA's moderate area PM–10 requirements.

EPA recently established a new standard for PM–2.5 and also revised the PM–10 standards; however, today's proposal does not address these new standards.

DATES: Written comments will be accepted until May 18, 1998. EPA is scheduled to hold a public workshop followed by a public hearing at the following time:

Phoenix PM–10 Moderate Area FIP Workshop and Hearing

Thursday, April 16, 1998, Workshop, 9 a.m. to 11 a.m.

Hearing, Day Session—12 noon to 4:30 p.m., Evening Session—Convenes at 7 p.m.

ADDRESSES: Written comments on the EPA's proposed FIP and SIP actions must be received by EPA at the address below on or before May 18, 1998. Comments should be submitted (in duplicate, if possible) to: EPA Region 9, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn. Eleanor Kaplan, (Phone: 415–744–1287).

The public workshop and public hearing will be held at the Phoenix Corporate Center Auditorium, 3003 North Central Avenue, Phoenix, Arizona.

A copy of docket No. A–09–98, containing material relevant to EPA's proposed action, is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of docket no. A–09–98 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic availability: This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09.

FOR FURTHER INFORMATION CONTACT: For questions and issues regarding the proposed measure for agricultural fields and aprons contact John Ungvarsky (415) 744–1286; for questions and issues regarding the proposed rule for vacant lots, unpaved parking lots and unpaved roads contact Karen Irwin (415) 744–1903; for other general FIP and SIP questions and issues contact Doris Lo (415) 744–1287.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Background

The Phoenix area violates both the annual and 24-hour national health-based standards for particulate matter with diameters of 10 microns or less. Consequently, Maricopa County residents continue to breathe unhealthy air. Particulate matter affects the respiratory system and can cause damage to lung tissue and premature death. The elderly, children, and people with chronic lung disease, influenza, or asthma are especially sensitive to high levels of particulate matter. EPA recently established a new standard for particulate matter of diameters of 2.5 microns or less and also revised the PM–10 standards; however, today's proposal does not address these new standards.

The primary cause of the PM–10 problem is dust on paved roads kicked up by vehicle traffic, and windblown dust from construction sites, earth moving operations, unpaved parking lots and roads, disturbed vacant lots, agricultural fields and aprons, and other disturbed areas.

When an area violates a health-based standard, the Clean Air Act (CAA) requires that the area be designated as nonattainment for that pollutant. Phoenix was originally designated and classified as a moderate nonattainment area for particulate matter, and Arizona was required to develop a plan that put into place a basic set of control measures. These measures did not adequately control the particulate pollution problem. When the area failed to attain the standards in 1994 it was reclassified as a serious nonattainment area, and the State is now required to develop a plan with more comprehensive control measures.

Despite the fact that the State is now working on its serious area plan, EPA is under court order, as a result of a lawsuit by the Arizona Center for Law in the Public Interest (ACLPI), to develop a moderate area federal implementation plan (FIP) for the Maricopa area. EPA is required to prepare this FIP because the State does not have an approved moderate area plan. Under the court order, EPA has until March 20, 1998, to propose and July 18, 1998, to finalize the FIP.

EPA has determined that not all the basic controls on sources contributing to violations of the particulate standards are in place. While the State has implemented a number of measures including controls on construction and earth moving operations, as well as a vehicle emission inspection and maintenance program and a clean burning gasoline program, there remains a need for additional emissions reductions. Having considered its authority and resource constraints, EPA is proposing two measures in the FIP for the control of dust from unpaved roads, parking lots, and vacant lots and agricultural fields and aprons. These measures will contribute to the eventual attainment of both the annual and 24-hour PM–10 standards.

The State intends to submit its serious area particulate plan in the summer of 1998. If the plan includes control measures for the sources covered by the FIP and those measures are approved by EPA, the Agency will be able to withdraw the final FIP measures. EPA will continue working with the appropriate State and local agencies, as well as the agricultural community and the cities in the metropolitan area, to replace the FIP measures with State measures. EPA believes that clean air is likely to be achieved faster, and in greater harmony with local economic and community goals, if its role as a backstop is minimized by effective State and local actions. Because of the willingness of the State and local communities to identify and pursue solutions to their air quality problems, as evidenced by the Governor's Air Quality Strategies Task Force, EPA expects successful State and local action.

B. FIP Proposal

EPA's FIP proposal includes a fugitive dust rule and an enforceable commitment in regulatory form to implement control measures for agricultural PM–10 sources by July 2000. These are discussed in more detail below. During the development of these measures, EPA held numerous meetings with the affected community. The purpose of these meetings was not only to inform the public of EPA's FIP obligation and the need for the Agency to develop an adequate moderate area PM–10 plan, but also to help EPA craft air quality rules that meet both the public health and economic needs of this area. During all of these discussions there was an ongoing dialogue regarding what would be needed to replace the FIP with appropriate State measures. EPA appreciates the information that was provided by the community during the development phase of the proposed FIP, and the Agency will continue to work with the community in the development of the State's serious area plan. EPA is hopeful that the local planning effort will result in an approvable SIP that will allow EPA to withdraw its FIP.

Fugitive Dust Rule

Although EPA has approved a Maricopa County rule (MCESD Rule 310) which requires controls for unpaved roads, unpaved parking lots and vacant lots, the County is not adequately enforcing its rule for these three sources due to lack of resources. Therefore, EPA has developed a FIP rule that proposes specific controls that will ensure adequate enforcement for these sources. For each source category, the FIP rule includes three to four control measure options and allows submittal of alternative control measures subject to EPA approval. In addition to the FIP rule, EPA is addressing the resource issue by providing additional inspection resources to MCESD through a CAA section 105 grant. These resources will be used by the County to verify compliance with the FIP rule. In order to remove the FIP requirement, MCESD will have to submit to EPA a credible implementation strategy for Rule 310, including the provision of the additional inspection and enforcement resources needed to ensure implementation of its rule. Individual cities can reduce the scope of the FIP once EPA has approved ordinances submitted as SIP revisions that eliminate and/or control these sources.

Enforceable Commitment for Agriculture

As mentioned above, EPA has approved Maricopa County Rule 310 which requires control of fugitive dust sources, including agricultural sources. However, MCESD is not ensuring adequate enforcement of the rule for agricultural fields and aprons. Therefore, EPA has developed an enforceable commitment in regulatory form for the FIP that requires EPA to propose controls on agricultural sources by September 1999 and implement these controls by July 2000. In discussions with key stakeholders, general agreement was reached that these controls will be in the form of best management practices. EPA believes that this approach will ensure successful dust control in Maricopa's unique environment. In order to remove the FIP requirements, the State will need to submit and received approval of a SIP measure that replaces the enforceable commitment. EPA is working closely with the regulatory agencies and the agricultural community to accomplish this goal.

Tribal Issues

There are three Indian reservations located within the Phoenix nonattainment area and which therefore could be considered subject to the FIP. However, since this FIP is designed to fill a gap that exists in the State plan, and the State plan does not apply to sources within Indian country, EPA has decided it is inappropriate to include the Indian reservations in this FIP. All three tribes have expressed an interest in developing air quality programs. EPA will develop the data, in cooperation with the tribes, that is needed to properly assess whether controls are required to attain the standards. EPA will ensure that controls are implemented either through EPA-approved tribal measures or, if necessary, federal measures.

C. Public Involvement in the FIP Process

Each area has its own unique qualities and concerns. EPA can fully understand those concerns, and plans to take them into account, through direct participation by the affected community; therefore, in addition to the meetings that EPA has already had with the Phoenix community, there will be additional opportunities for public input. EPA wants to make the final plan a product of local involvement and consensus. EPA believes strongly that it can best fulfill the goal of the Clean Air Act—that is, clean and healthy air for everyone—and meet the Agency's court-ordered obligations by preparing this plan with the input of the local community.

After this proposed action is signed and published in the **Federal Register**, EPA will hold a workshop and public hearing on April 16, 1998 in the City of Phoenix. The workshop will provide an opportunity for EPA to explain to the community why it is imposing this FIP, what measures are included in this FIP, and who will potentially be impacted by the FIP. The workshop will also provide the community the opportunity to ask questions of EPA, and to make suggestions with respect to its proposed action. The public hearing will follow the workshop. During the public hearing, EPA will be taking formal comment on the FIP proposal. The public comment period will begin upon publication of the FIP proposal and will remain open for 30 days following the public hearing, or until May 18, 1998. EPA encourages everyone who has an interest in this proposed action to comment upon it. EPA will consider all comments received during the public comment period.

II. Background

A. Clean Air Act Requirements

1. Designation and Classification

On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas, including portions of the pre-existing Maricopa County [1] PM–10 nonattainment area, meeting the conditions of section 107(d) of the Act were designated nonattainment for the PM–10 national ambient air quality standards (NAAQS) [2] by operation of law. Once an area is designated nonattainment, section 188 of the Clean Air Act (CAA) outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas were initially classified as ''moderate'' by operation of law. 56 FR 11101 (March 15, 1991).

A moderate area could subsequently be reclassified as ''serious'' under CAA section 188(b)(1), if, at any time, EPA determined that the area could not practicably attain the PM–10 NAAQS by the applicable attainment date for moderate areas, December 31, 1994. Moreover, a moderate area would be reclassified by operation of law if EPA determined after the applicable attainment date that, based on actual air quality data, the area was not in attainment after that date. CAA section 188(b)(2).

On May 10, 1996, EPA published a final reclassification of the Maricopa County PM–10 nonattainment area as a serious PM–10 nonattainment area based on actual air quality data. 61 FR 21372. Having been reclassified, the area is required to meet the serious area requirements in the CAA, including a demonstration that the area will attain the PM–10 NAAQS as expeditiously as practicable but no later than December 31, 2001. CAA sections 188(c)(2) and 189(b).[3] Pursuant to section 189(b)(2), the State of Arizona was required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997.[4]

2. Moderate Area Planning Requirements

The air quality planning requirements for PM–10 nonattainment areas are set out in subparts 1 and 4 of title I of the Clean Air Act. EPA has issued a ''General Preamble'' [5] describing EPA's preliminary views on how the Agency intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP provisions.

Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the

[1] ''Maricopa,'' ''Maricopa County'' and ''Phoenix'' are used interchangeably throughout this proposal to refer to the nonattainment area.

[2] There are two PM–10 NAAQS, a 24-hour standard and an annual standard. 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m^3). The 24-hour PM–10 standard of 150 μg/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

On July 18, 1997, EPA revised both the annual and the 24-hour PM–10 standards and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5)(62 FR 38651). While the revised suite of PM standards reflects an overall strengthening of the regulatory standard for particulate matter, the revised 24-hour PM–10 standard, viewed by itself, represents a relaxation of that standard. As such, for areas such as Phoenix that had not attained the pre-existing 24-hour standard at the time of the relaxation, CAA section 172(e) calls for application of controls to be promulgated by EPA that are no less stringent than would have been required for areas designated nonattainment prior to the relaxation. While today's proposed actions relate only to the CAA requirements concerning the 24-hour and annual PM–10 standards, as originally promulgated in 1987, the proposed FIP is consistent with the section 172(e) requirement.

[3] While the serious area PM–10 CAA requirements are referenced periodically throughout this notice, EPA's FIP obligation, the subject of today's proposal, relates only to the moderate area statutory requirements.

[4] By letter dated December 11, 1997 from Russell Rhoades, ADEQ, to Felicia Marcus, EPA, Arizona submitted revisions to the Arizona SIP for achieving and maintaining the PM–10 NAAQS. These revisions consist of particulate control measures in the document ''Serious Area Committed Particulate Control Measures for PM–10 for the Maricopa County Nonattainment Area and Support Technical Analysis,'' Maricopa Association of Governments (MAG), December 1997. On February 6, 1998, EPA found that these measures meet the Agency's completeness criteria as set forth at 40 CFR part 51, Appendix V, but has not yet approved or disapproved them. Also on February 6, 1998, EPA found, pursuant to CAA section 179(a), that Arizona had failed to submit the serious area nonattainment plan for Phoenix by the required date. In the same rule, EPA found that Arizona had failed to submit certain portions of the moderate area plan for the area. 63 FR 9423 (February 25, 1998). These moderate area portions are discussed further below.

[5] See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993 (CAA sections 172(c)(1) and 189(a)(1)(C));

(b) Provisions to assure implementation of RACT on major stationary sources of PM–10 precursors except where EPA has determined that such sources do not contribute significantly to exceedances of the PM–10 standards (CAA section 189(e));

(c) Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B));

(d) For plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP), as defined in section 171(l), toward attainment by the applicable attainment date (CAA section 189(c));[6] and

(e) For plan revisions demonstrating impracticability, such annual incremental reductions in PM–10 emissions as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the PM–10 NAAQS by the applicable attainment date (CAA sections 172(c)(2) and 171(1)).

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111, and EPA guidance implementing these provisions.

3. Federal Implementation Plan Provisions

Section 110(c) of the CAA provides that:

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that the State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under section 110(k)(1)(A),[7] or

(B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as:

A plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances).

EPA has wide-ranging authority under section 110(c) to fill in gaps left by a State failure. EPA's authority to prescribe FIP measures is of three types. First, EPA may promulgate any measure which it has authority to issue in a non-FIP context. Second, EPA may invoke section 110(c)'s general FIP authority and act to cure a planning inadequacy in any way not clearly prohibited by statute. Third, under section 110(c) the courts have held that EPA may exercise all authority that the State may exercise under the Act. For a more detailed discussion of these authorities and restrictions on EPA's FIP authorities, see 59 FR 23262, 23290–23292 (May 5, 1994).

4. Indian Reservations

a. EPA's FIP Obligation. As stated above, the purpose of EPA's proposed FIP is ''to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan,'' as specified in section 302(y). Because, except in the rare special circumstances that have not been shown to apply to Arizona, states have no jurisdiction to impose statutory or regulatory requirements in Indian country, the gaps in the Arizona PM–10 SIP for the Phoenix nonattainment area do not extend to tribal lands. As a result, EPA is not required in its proposed FIP to promulgate regulations for Indian lands within the Phoenix nonattainment area. While EPA is not proposing to extend the provisions of the proposed FIP to tribal lands, as discussed below, EPA and tribes, that are determined to be eligible by EPA, are authoriized under the CAA to protect air quality throughout Indian country.

b. EPA and Tribal CAA Authority in Indian Country. On February 12, 1998, EPA issued its final rule pursuant to CAA section 301(d) specifying the provisions of the Act for which Indian tribes may be treated in the same manner as states; the rule also authorizes eligible tribes to implement their own air programs under the Act. 63 FR 7254. In the proposed[8] and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country.

In the rulemaking, EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254–7259.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country. See, e.g., CAA sections 101(b)(1), 301(a), and 502(d), (e), and (i). Therefore, EPA believes that it has broad legal authority to provide federal protection in Indian country when tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement a program. In addition, section 301(d)(4) empowers EPA to directly administer CAA requirements in any case where EPA determines that treatment of tribes as identical to States is inappropriate or administratively infeasible. 63 FR at 7262. See also 59 FR at 43960.

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR at 43961.

EPA promulgated 40 CFR 49.11 in the final Tribal rule, providing that the Agency will promulgate a FIP within a reasonable time if tribal efforts do not result in EPA-approved programs. 63 FR at 7273. EPA has also undertaken an initiative to develop a comprehensive strategy for implementing the CAA in Indian country that will articulate specific steps the Agency will take to ensure that air quality problems in Indian country are addressed either by EPA or the tribes themselves. This strategy is currently in draft form. EPA

[6] As will be seen below, the proposed PM–10 FIP for the Maricopa area does not demonstrate attainment by the applicable attainment deadline, but rather includes the alternative demonstration that attainment by that date is impracticable. Therefore, section 189(c) does not apply and is not discussed further in this notice.

[7] Section 110(k)(1)(A) requires the Administrator to promulgate minimum criteria that any plan submission must meet before EPA is required to act on the submission. These completeness criteria are set forth at 40 CFR part 51, Appendix V.

[8] See 59 FR 43956 (August 25, 1994).

also intends to issue national regulations covering various categories of air pollution sources that would apply in those situations in which a tribe does not have an approved program. 63 FR at 7262–7264.

In the final Tribal rule, the Agency emphasizes that its strategy for implementing the CAA in Indian country is multi-pronged, ''one prong of which is federal implementation * * * [t]he other prongs derive from a 'grass-roots' approach in which staff in the EPA regional offices work with individual tribes to assess the air quality problems and develop, in consultation with the tribes, either tribal or federal strategies for addressing the problems.'' 63 FR at 7264.[9]

EPA believes that the strategy that it has developed for tribal lands in the Phoenix nonattainment area, discussed in section VI below, is consistent with the approach outlined above. In short, EPA intends to provide technical and financial support to the Tribes in the area so that they may develop their own programs if they wish to do so, and to develop federal measures should it become necessary.

B. History of Arizona's PM–10 Plans and Related EPA Actions

1. Arizona's Moderate Area PM–10 Plan

The State of Arizona originally submitted a moderate area PM–10 plan revision to EPA on November 15, 1991. On March 4, 1992, EPA found that the plan did not meet the Agency's completeness criteria at 40 CFR part 51, Appendix V, in part because a proper public hearing on the plan had not been held. Thereafter the State held another public hearing and resubmitted the SIP revision on August 11, 1993. On September 7, 1993 EPA found this plan to be complete. The State submitted a revised and updated version of the plan on March 3, 1994. See generally 59 FR 38402, 38403 (July 28, 1994).

On April 10, 1995, EPA approved the State's moderate area PM–10 implementation plan revision for the Maricopa area. 60 FR 18010. Among other elements in that plan, EPA approved the State's RFP and RACM demonstrations as meeting the requirements of sections 171(1), 172(c)(1), 172(c)(2), and 189(a)(1)(C) of the CAA. Based on its approval of the RACM demonstration, EPA also proposed to approve, as meeting the requirements of section 189(a)(1)(B), the State's demonstration that even with the implementation of all RACM by December 10, 1993, it was impracticable for the Maricopa area to attain the PM–10 NAAQS by December 31, 1994.[10]

On May 1, 1995, the Arizona Center for Law in the Public Interest (ACLPI) filed a petition for review of EPA's April 10, 1995 approval of the State's moderate area PM–10 plan in the United States Court of Appeals for the Ninth Circuit.

On May 14, 1996, the Ninth Circuit vacated EPA's approval of the States's PM–10 moderate area plan. *Ober v. EPA*, 84 F.3d 304 (9th Cir. 1996). In short, the Court concluded that the State's moderate area plan failed to address the moderate area CAA requirements for attainment, RFP and RACM for the 24-hour standard and mandated that EPA require the State to do so. The Court also found that EPA had failed to provide the required opportunity for comment with respect to the RFP and RACM demonstrations for the annual standard. In response to the Court's opinion, EPA initiated the following actions.

2. The Microscale Plan—24-hour Standard

In the wake of the Ninth Circuit's *Ober* opinion, EPA considered how to appropriately implement the Court's directive in the context of the State's then-prevailing PM–10 planning efforts for the Maricopa area. The Maricopa area was reclassified as a serious PM–10 nonattainment area just days before the case was decided and, as noted above, the State was required to submit a new PM–10 plan meeting the serious area requirements by December 10, 1997.[11] Therefore EPA had to reconcile the Court's mandate that the State submit a plan correcting its moderate area plan deficiencies regarding the 24-hour standard concurrent with its responsibility to submit a plan meeting the serious area requirements for both NAAQS.

EPA concluded that, given the substantial overlap of the moderate and serious area planning requirements, it would not be in the public interest to require the State to divert its scarce resources into two independent planning exercises. At the same time, the Agency recognized that timely action (i.e., prior to the serious area plan submittal deadline of December 10, 1997) was required in order to be responsive to the Court's mandate. Therefore EPA, in consultation with the Arizona Department of Environmental Quality (ADEQ) and the MCESD, decided that the State would incorporate the moderate area plan elements for the 24-hour standard into the serious area plan, but would split that planning effort into two related parts. Accordingly, EPA, in a September 18, 1996 letter to ADEQ, required submittal of a limited, locally-targeted plan (microscale plan) analyzing air quality impacts at specific monitoring sites, and meeting both the moderate and serious area requirements for the 24-hour standard by May 9, 1997 (extended from an original deadline of April 18) and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. Thus, the microscale and regional plans taken together would satisfy both the moderate area requirements mandated by the Court and the serious area planning requirements for both standards.

The State submitted the microscale plan to EPA on May 9, 1997 and on August 4, 1997, EPA approved the following portions of the plan:

(1) under sections 172(c)(1), 189(a)(1)(C) and 189(b)(1)(B), the provisions for implementing RACM and best available control technology (BACM) for the significant source categories of disturbed cleared areas, earth moving, and industrial haul roads; and

(2) under sections 189(a)(1)(B), 189(b)(1)(A), and 189(c), the attainment and RFP demonstrations for the Maryvale and Salt River monitoring sites.

(3) the resolution by the County of Maricopa to improve the administration of Maricopa County's fugitive dust control program and to foster interagency cooperation (adopted May 14, 1997);

(4) the resolutions of intent to work cooperatively with Maricopa County to control the generation of fugitive dust pollution adopted by the Cities of Phoenix (April 9, 1997), Tempe (March 27, 1997), Chandler (March 27, 1997), Glendale (March 25, 1997), Scottsdale (March 31, 1997), and Mesa (April 23, 1997) and the Town of Gilbert (April 15, 1997); and

(5) MCESD's Rule 310 (Open Fugitive Dust Sources), Rule 311 (Particulate Matter from

[9] EPA then elaborates on this grass-roots approach by discussing three components of the Agency's strategy: a needs assessment, including the development of emission inventories, outreach and communication, and training. 63 FR at 7264.

[10] The reader should refer to both the proposed approval, 59 FR 38402, and the final rule, 60 FR 18010, for EPA's interpretation of certain moderate area PM–10 requirements of the CAA and the Agency's application of these interpretations to the State's moderate area PM–10 plan. Those notices should also be consulted for the history of the State's PM–10 plan submittals and EPA's actions concerning them.

[11] For the CAA serious area PM–10 plan requirements, see section 189(b). EPA has issued an Addendum to the General Preamble (Addendum) describing the Agency's preliminary views on how it intends to review SIPs and SIP revisions containing serious area plan provisions. See ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998, 42011 (August 16, 1996).

Process Industries) and Rule 316 (Nonmetallic Mineral Mining and Processing).

In the same action, EPA disapproved the following provisions of the State's microscale plan:

(1) under sections 172(c)(1), 189(a)(1)(C) and 189(b)(1)(B), the provisions for implementing RACM and BACM for the significant source categories of agricultural fields, agricultural aprons, vacant lands, unpaved parking lots, and unpaved roads; and

(2) under sections 189(a)(1)(B), 189(b)(1)(A), and 189(c)(1), the attainment and RFP demonstrations at the West Chandler and Gilbert monitoring sites.[12]

3. EPA Actions on Arizona's Moderate Area PM–10 Plan Post-Ober With Respect to the Annual Standard

In response to the *Ober* decision, EPA provided an opportunity for public comment on the State's justifications for rejecting certain measures as RACM and on the emission reduction credit granted by the Agency for Rule 310 as it related to the State's RFP demonstration. EPA also proposed to restore its approval of the RACM, RFP and impracticability demonstrations in the State's moderate area plan with respect to the annual PM–10 standard. 61 FR 54972 (October 23, 1996).

As a result of the extensive technical work associated with the State's microscale plan, EPA has concluded, as discussed in detail in section III below, that it is no longer appropriate to restore its approval of the demonstrations in the State's moderate area plan for the annual standard. Therefore, EPA is proposing to withdraw its 1996 proposal and, instead, is now proposing to disapprove the impracticability and RACM demonstrations in that plan.

C. History of PM–10 FIP Litigation in Phoenix

On June 28, 1994, ACLPI filed, on behalf of two Phoenix residents, a complaint, No. CIV 94–1318 PHX PGR, in the United States District Court for the District of Arizona alleging that EPA was required, pursuant to section 110(c) of the CAA, to have promulgated a moderate area PM–10 FIP for Phoenix by March 4, 1994, two years after EPA's finding that the State's moderate area plan was incomplete. ACLPI sought, among other things, an order requiring EPA to promulgate a final FIP in 12 months. On February 28, 1995, the district court approved a consent decree requiring EPA to take final action on the moderate area plan by March 1, 1995. If EPA approved the plan, as turned out to be the case, the district court action would be stayed pending appellate review.

On May 1, 1995, ACLPI filed a petition for review of EPA's April 10, 1995 approval of Arizona's moderate area PM–10 plan for the Phoenix area in the United States Court of Appeals for the Ninth Circuit. *Ober v. EPA*, No. 95–70352. On May 14, 1996, the Court issued its opinion in the *Ober* case vacating EPA's approval of the State's plan.[13]

As a result of the Ninth Circuit's opinion in *Ober*, the stay of proceedings in the district court FIP case was lifted. On November 29, 1996 and March 25, 1997, respectively, the court approved a second consent decree and a modified second consent decree in which EPA agreed that if the Agency disapproved the State's microscale plan in whole or in part, the Administrator is required to sign by March 20, 1998 a Notice of Proposed Rulemaking (NPRM) that sets forth a proposed FIP for Phoenix that meets the moderate area PM–10 requirements for the annual and 24-hour standards for attainment, RACM and RFP as set forth in CAA sections 189(a)(1)(B) and (C), and 172(c)(2) or 189(c)(1). Under the decree, EPA must sign a Notice of Final Rulemaking (NFRM) setting forth the final FIP by July 18, 1998. EPA's FIP obligation is relieved as to any portion of the plan for which EPA signs a NFRM approving corrective SIP revisions by July 18, 1998.

III. SIP Actions

A. Proposed Disapproval of Moderate Area Plan

In its July 28, 1994 proposed approval of the State's moderate area plan, EPA noted that the plan's emission inventory identified fugitive dust sources as contributing more than 50 percent of the PM–10 emissions in the Phoenix area. These fugitive dust sources included, but were not limited to, construction and demolition activities, farming operations, uncovered haul trucks, and emissions from unpaved roads. 59 FR 38405. EPA also stated that it believed that Maricopa County's fugitive dust rule, Rule 310, fully addressed fugitive dust sources in the area. 59 FR 38404. Based in part on this belief and its evaluation of the balance of RACM in the plan, EPA proposed and eventually found that the moderate area plan assured timely implementation of RACM, and that these RACM were sufficient to demonstrate RFP but were insufficient to demonstrate attainment by the moderate area deadline of December 31, 1994. EPA, therefore, approved the RACM, RFP, and impracticability demonstrations in the State's moderate area plan. 60 FR 18010.

As discussed above, EPA's approval of the moderate area plan was subsequently vacated in *Ober*. In October 1996, EPA proposed to restore its approval of the RACM, RFP and impracticability demonstrations in the State's moderate area plan for the annual standard. 61 FR 54972. This proposal was based, in part, on the Agency's continued belief that Rule 310 represented RACM for fugitive dust sources in Maricopa County.

As described previously, EPA subsequently approved in part and disapproved in part the State's microscale plan for the 24-hour standard. In its evaluation of the microscale plan, EPA found that, in fact, Rule 310, due to inadequate commitment of resources by the State, does not assure enforcement of RACM on a number of fugitive dust sources, including unpaved roads and unpaved parking lots, that are legally subject to the rule. In addition, EPA found that there were no RACM that applied for agricultural sources. 62 FR 41862.

While these findings were made in the context of evaluating RACM for the 24-hour standard, the findings also apply to the annual standard. As noted above, EPA's 1994 approval of the State's moderate area plan relied in large part on the Agency's finding that Rule 310 constituted RACM for fugitive dust sources. As a result of its findings with respect to the microscale plan, EPA no longer considers Rule 310 to satisfy the Act's requirement for enforceable RACM for fugitive dust sources not permitted by the County under the rule; therefore, since the Agency can no longer find that the State's moderate area plan assures the required source compliance with Rule 310 and, hence, does not ensure enforcement of RACM as required by the Act, EPA, is proposing to disapprove the RACM demonstration for the annual standard in the State's moderate area plan.

In order for a moderate area plan to demonstrate that attainment is impracticable, it must make that showing in light of implementation of all RACM. 57 FR 13544. Since EPA is now proposing to disapprove the RACM

[12] See EPA's proposed and final actions on the State's microscale plan at 62 FR 31025 (June 6, 1997) and 62 FR 41856 (August 4, 1997).

[13] The reader is referred to the text of the opinion for the Court's disposition of the range of issues raised by ACLPI in its petition. See 84 F.3d 304 (9th Cir. 1996). See also 61 FR 54972 in which EPA preliminarily addresses the Court's opinion as it relates to the RACM, RFP and attainment demonstrations for the annual standard and 62 FR 31025 in which EPA discusses the opinion as it relates to the required demonstrations for the 24-hour standard.

demonstration in the State's moderate area plan, the Agency is also proposing to disapprove the demonstration contained in that plan that attainment by the moderate area deadline of December 31, 1994 was impracticable.[14]

EPA, however, is not proposing to disapprove the RFP demonstration in the State's moderate area plan. The estimated emission reductions from the implementation of Rule 310 on unpermitted sources accounted for less than 20 percent of the total emission reductions from the plan. Even without the reductions from the unpermitted sources, EPA believes that plan still contains sufficient emission reductions from other measures to demonstrate RFP for the annual standard and, therefore, disapproval is not warranted. This issue, however, is academic since, as noted before, EPA is withdrawing its proposal to restore approval of the RFP demonstration for the annual standard in the State's plan and is substituting its own proposed RFP demonstration for that standard.

B. Withdrawal of Proposal to Restore Moderate Area Plan Demonstrations for the Annual PM–10 Standard

As a consequence of the proposed disapprovals discussed above, EPA is today withdrawing its October 26, 1996 proposal (61 FR 54972) to restore the Agency's approval of the RACM and impracticability demonstrations for the annual standard in the State's moderate area plan.

EPA is today also withdrawing its proposal to restore approval of the RFP demonstration for the annual standard in the State's plan. While EPA continues to believe that the plan as a whole continues to demonstrate RFP, its previous analysis of the State's RFP demonstration is no longer valid because it relied in part upon emission reductions from the implementation of Rule 310 on a number of unpermitted source categories. Under its CAA section 110(c) authority, EPA is proposing its own RFP demonstration for the annual standard as described in section V.C.

IV. Moderate Area PM–10 Planning Requirements for the FIP Proposal

A. Attainment/Impracticability Demonstration

Because the moderate area attainment deadline, December 31, 1994, has passed, EPA is confronted with the issue of how to define the moderate area requirements applicable to the Agency's proposed FIP. EPA believes that because the Maricopa area was reclassified from a moderate to a serious nonattainment area, the moderate area requirements (demonstration of impracticability or attainment by no later than December 31, 1994) have been superseded by the serious area attainment requirement (attainment by no later than December 31, 2001) and are therefore now moot. Having reviewed the CAA's moderate and serious area PM–10 attainment provisions, EPA has concluded that when a moderate PM–10 area has been reclassified after the moderate area attainment deadline has passed and been replaced with a new deadline, the moderate area deadline no longer has any logical, practical or legal significance.

Thus, under this interpretation, there would be no need for the proposed FIP, to the extent that it is intended to meet the CAA's moderate area requirements, to demonstrate attainment. In other words, such an attainment demonstration would only be required when the State submits its complete serious area plan to comply with the section 189(b)(1) attainment demonstration requirement. EPA believes that its interpretation can be reconciled with the *Ober* Court's directive that EPA require the State to address the moderate area attainment requirements for the 24-hour standard and that such an interpretation is reasonable given the legal and factual context in which that case was decided. EPA's reasoning is explained in detail at 61 FR 54972, 54974–54975 (October 23, 1996). Nevertheless, EPA complied with the Court's remedies regarding the moderate area attainment requirements by directing the State to meet those requirements in the microscale plan.[15] Having complied with the Court opinion by directing that the State meet the moderate area attainment requirements in its planning efforts, EPA discerns no basis for applying different requirements to the Agency in promulgating a moderate area FIP that is intended to correct State planning deficiencies.

Having determined that the proposed FIP must meet the CAA's moderate area attainment requirements, EPA has concluded that since the December 31, 1994 deadline has passed and the Maricopa area has been reclassified, the only attainment deadline currently applicable to the area is the serious area deadline, that is, achievement of attainment as expeditiously as practicable, but no later than December 31, 2001. Thus, consistent with the terms of section 189(a)(1)(B), the moderate FIP must either demonstrate attainment of the PM–10 NAAQS as expeditiously as practicable but no later than December 31, 2001, or, alternatively demonstrate that attainment by that date is impracticable.

B. RACM/RACT Demonstration

Sections 172(c)(1) and 189(a)(1)(C) read together require that moderate area PM–10 plans include RACM and RACT for existing sources of PM–10. These plans were to provide for implementation of RACM/RACT no later than December 10, 1993. Since the moderate area deadline for the implementation of RACM/RACT has passed, EPA has concluded that the RACM/RACT required in the FIP must be implemented ''as soon as possible.'' *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' See 55 FR 41204, 41210 (October 1, 1990).

The methodology for determining RACM/RACT is described in detail in the General Preamble. 57 FR 13498, 13540–13541. In summary, EPA suggests starting to define RACM with the list of available control measures for fugitive dust, residential wood combustion, and prescribed burning contained in Appendices C1, C2, and C3 of the General Preamble and adding to this list any additional control measures proposed and documented in public comments. Any measures that apply to emission sources of PM–10 and that are de minimis and any measures that are unreasonable for technology reasons or because of the cost of the control in the area can then be culled from the list. In addition, potential RACM may be culled from the list if a measure cannot be implemented on a schedule that would advance the date for attainment in the area. 57 13498, 13560.

In addressing cost issues, the General Preamble suggests that in case of public sector sources and control measures, the cost evaluation should consider the impact of the reasonableness of the measures on the governmental entity that must bear the responsibility for their implementation. 57 FR 13541.

The General Preamble does not define ''de minimis'' except to say that it would be unreasonable to apply

[14] The discussion in section IV.A. regarding EPA's views of the status of the CAA's moderate area attainment requirements following an area's reclassification to serious is applicable here and the reader is referred to that section.

[15] While EPA could have sought clarification on this issue from the Ninth Circuit, the Agency did not do so because such a review would necessarily have occurred without benefit of a thorough briefing on the issue and in the absence of an administrative record. The Agency does, however, reserve its right to assert its interpretation in any challenge to EPA's implementation of the Court's remedies or in the context of other reclassifications.

controls to sources that are negligible contributors to ambient concentrations. 57 FR 13540, footnote 18. The regulatory scheme for PM in subpart 4 of the CAA establishes two graduated levels of controls, RACM and BACM, depending on the severity of the area's air quality. See CAA section 189(a) and (b). These statutory requirements, applicable to moderate and serious areas, respectively, clearly contemplate that smaller PM sources need not, in the first instance, bear the burden of emission reductions. Thus, in determining the initial level of control, it is appropriate to focus on what is reasonable and practicable for significant sources of PM emissions.

For its proposed FIP, EPA is proposing to rely on the criteria applied to define significant contributors under its new source permitting programs (40 CFR 51.165(b)) as a surrogate for determining which source categories require the application of RACM. Under EPA's new source permitting programs, a PM–10 source is considered to be a ''significant contributor'' if it contributes 5 μg/m^3 or more of PM–10 to a location of expected 24-hour exceedances and 1 μg/m^3 or more to a location of expected annual violation. Therefore, a de minimis source category for the purposes of defining which source categories require the application of RACM under section 189(a)(1)(C), is proposed to be one that contributes less than 5 μg/m^3 of PM–10 to a location of expected 24-hour exceedances and less than 1 μg/m^3 to a location of expected annual violations.

It should be emphasized that the de minimis criterion is invoked solely for the purposes of determining which source categories need RACM and not for determining which source categories need controls for attainment. In establishing this RACM de minimis criterion, EPA is not taking the position that de minimis RACM source categories can escape controls if such controls are needed for attainment or RFP. In that case, it is the Agency's position that the level of control on such insignificant sources need only be at the level required to demonstrate reasonable further progress and expeditious attainment and that this level need not be justified under section 189(a)(1)(C) as RACM.

For any RACM that EPA rejects for reasons of technology, cost, size of source category or timing of implementation as described above, the Agency must provide a reasoned justification for the rejection. Once the final list of RACM is defined, each RACM must be converted into a legally enforceable vehicle such as a rule, permit, or other enforceable document. 57 FR 13498, 13541.

C. Reasonable Further Progress (RFP) Demonstration to Follow

EPA has concluded that for PM–10 plans that demonstrate that it is impracticable for an area to attain the NAAQS by the applicable attainment date, the governing statutory requirement for RFP is section 172(c)(2) as defined by section 171(l).[16] Section 172(c)(2) of the Act states that nonattainment plans shall require reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [D] or may reasonably be required by [EPA] for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.''

EPA has interpreted the RFP requirement for areas demonstrating impracticability as being met by a showing that the implementation of all RACM has resulted in incremental emission reductions below pre-implementation levels. EPA believes that this interpretation is consistent with the definition in section 171(l) and with the statutory term ''reasonable further progress.''

V. Summary of EPA's FIP Proposal

As a moderate area plan, EPA's proposed FIP must demonstrate attainment of both the annual and 24-hour PM–10 standards by December 31, 2001 (as a result of the passing of the moderate area deadline and the reclassification to serious) and provide for expeditious implementation of RACM for all significant source categories, or demonstrate that even with RACM it is impracticable for the area to attain by that date. The proposed FIP must also demonstrate RFP consistent with the attainment or impracticability demonstration.[17]

EPA's FIP obligation arises only as to SIP provisions that are not approved. As discussed previously in section II.B.2., EPA has already approved RACM, attainment, and RFP demonstrations for certain sources of source categories in the Phoenix area. Specifically, EPA has already approved RACM for disturbed cleared areas (e.g., construction sources), earth moving, industrial haul roads, and stationary sources and the attainment and RFP demonstrations for the 24-hour standard at the Maryvale and Salt River monitoring sites. 62 FR 41856. As a result, this proposed FIP does not address these SIP elements.

EPA, however, has disapproved the State's RACM demonstrations for the significant source categories of unpaved roads, unpaved parking lots, vacant lots, and agricultural fields and aprons as well as its attainment and RFP demonstrations for the 24-hour standard at the Gilbert and West Chandler monitoring sites. 62 FR 41856. In addition, EPA is proposing to disapprove the RACM and attainment/impracticability demonstrations for the annual standard in the State's moderate area plan and to revise the State's RFP demonstration for this standard.[18] See Section III.A.

The following sections describe EPA's proposals to address each of the outstanding elements of the Phoenix moderate plan: RACM/RACT demonstration, attainment/impracticability demonstrations, and RFP demonstrations.

A. RACM/RACT Demonstration

1. RACT and PM–10 Precursors

a. RACT. In the General Preamble, EPA recommends that major stationary sources of PM–10 be the starting point for a reasonably available control technology (RACT) analysis. 57 FR 13541. Stationary sources of PM–10 in the Phoenix area include power plants, concrete manufacturing, sand and gravel operations, and cotton ginning. MCESD has adopted regulations requiring RACT for stationary sources of PM–10: Rule 311, ''Particulate Matter from Process Industries,'' and Rule 316, ''Nonmetallic Mineral Mining and Processing.'' These measures were approved by EPA in 1995 as RACT for PM–10 stationary sources as part of the moderate area plan approval. 60 FR 18009. While not at issue in the litigation regarding that plan's approval, EPA's approval of these rules was also incidentally vacated by the *Ober* decision. The Agency restored these RACT rules to the SIP as part of its action on the microscale plan. 62 FR 41862.

[16] EPA originally set forth preliminary guidance on the RFP requirements for such plans in its final rule approving the Arizona moderate area PM–10 plan for the Phoenix area. See 60 FR 18010, 18013. The Agency subsequently clarified portions of that guidance in its proposal to restore the annual standard demonstrations in the State's moderate area plan following the Ninth Circuit's Ober decision. See 61 FR 54972, 54973–54974. The reader is referred to these notices for an expanded discussion of the Agency's interpretation of the RFP requirements for moderate PM–10 areas demonstrating impracticability.

[17] See section IV. above.

[18] EPA's FIP obligation was initially triggered by an incompleteness finding on the State's moderate area plan submittal. Although EPA subsequently determined the submittal to be complete, the FIP obligation continues until there is a fully approved SIP in place.

b. PM–10 Precursors. Under CAA section 189(e), the control requirements applicable to major stationary sources of PM–10 must also be applied to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in the area. ''Significantly'' is not defined in either the Act or in the General Preamble. Rather, for moderate areas, the determination is to be made on a case-by-case basis. 57 FR at 13539. For this action, EPA proposes to rely on the criteria applied under its new source permitting programs (40 CFR 51.165(b)) to guide its review of whether major stationary sources of PM–10 precursors significantly contribute to PM–10 levels in excess of the standard. See Section IV.B. A major stationary source in a moderate area is one that emits or has the potential to emit 100 tons per year or more of PM–10 or a PM–10 precursor. 57 FR 13538.

PM–10 precursors can include sulfur oxides (SO_X), nitrogen oxides (NO_X), ammonia, and volatile organic compounds (VOCs). In the Phoenix area, VOCs are not important in secondary particulate formation. Sulfur oxide emissions in the area are dominated by emissions from non-road engines and thus major sources of SO_X account for less than 10 percent of the total inventory. Nitrogen oxide emissions are almost entirely (90 percent) from on- and non-road engines, with major stationary sources accounting for only 4.3 percent of the total inventory. Livestock operations (which are not considered major point sources) account for 99.8 percent of ammonia emissions. See Tables 2–2 and B3–1 in ''1994 Regional PM–10 Emission Inventory for the Maricopa County Nonattainment Area,'' Draft Final Report, MAG, May 1997. In total, major point sources account for less than 7 percent of the total precursor inventory.

Draft PM–10 air quality modeling for the Phoenix nonattainment area indicates that exceedances of both the 24-hour and annual standards are attributable chiefly to direct particulate matter emissions from re-entrained dust from paved roads and fugitive dust from disturbed surfaces such as construction sites and agricultural fields. The draft modeling also indicates that secondary particulate formation from all sources of precursors (including natural background) contributes from 3.6 to 9.4 $\mu g/m^3$ to the modeled 24-hour episodes. See ''Technical Support Document for the Regional PM–10 Modeling in Support of the 1997 Serious Area PM–10 Plan for Maricopa County Nonattainment Area,'' Draft Report, MAG, October 1997, Table 3–26 (MAG Modeling TSD). No contribution from secondary particulates to the annual standard was estimated in the draft modeling; however, based on a crude average of the results of the eight 24-hour episodes modeled, the annual total impact (including background) of secondary particulates is around 5.6 $\mu g/m^3$.

From these modeling results, and assuming that a source's contribution to secondary particulate levels is proportional to its presence in the inventory, major stationary sources of PM–10 precursors contribute no more than 0.6 $\mu g/m^3$ to the 24-hour standard and 0.3 $\mu g/m^3$ to the annual standard (the actual contribution is likely to be less when the background levels of secondary particulates are factored out). Both these levels are well below the 5 $\mu g/m^3$ 24-hour standard and 1 $\mu g/m^3$ annual standard significance levels; therefore, EPA proposes to find, based on existing modeling, that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels in the Maricopa area which exceed the PM–10 NAAQS, and therefore, RACT on these major sources is not required under section 189(e). With this proposal, which is based on an assessment of the current mix of sources and meteorological patterns, EPA is not drawing any conclusions on the potential future need or desirability of controls on major sources of PM–10 precursors to assure eventual attainment of the PM–10 standard in the Phoenix area.

2. RACM Approach

As discussed in section IV.B. above, EPA's General Preamble suggests determining RACM by beginning with the list of measures found in Appendix C to the General Preamble and adding to that list any measures which have been suggested by public comments. Any measures that are determined to apply to emission sources of PM–10 that are de minimis and any measures that are technologically infeasible or have unreasonable costs can then be culled from the list. A reasoned justification must be provided for each measure that is rejected as RACM. 57 FR 13498, 13540.

EPA has identified a list of 99 potential control measures. This list of measures is taken from the list of measures developed for the State's 1991 moderate area plan and includes the measures found in Appendix C to the General Preamble as well as measures recommended by the Maricopa air agencies and in public comments on the moderate area plan.[19] The measures range from fugitive dust and transportation control measures to measures which achieve reductions from national transportation sources such as aircraft and trains.

Before evaluating measures as RACM, EPA first screened the list of 99 measures to determine which measures were applicable to the Phoenix area and for which EPA had legal authority. EPA then screened the list to determine which measures it has already approved as State RACM or adopted at the federal level and considers RACM. Where EPA has already determined a measure to be RACM, no further analysis of the measure is necessary. Finally, the Agency evaluated the resulting shorter list of measures based on the General Preamble's RACM criteria to identify which measures constituted RACM for the Phoenix area.

Readers should note that the following analysis is meant to apply only in the limited instance of this moderate area PM–10 FIP for the Maricopa County area and only to the determination of the availability and reasonableness of controls for adoption and implementation by EPA and not by the State of Arizona, its local jurisdictions or other states. In contrast to EPA's regulatory authority as a federal executive-branch agency, the concept of ''state'' as used in the Clean Air Act embodies both the state's executive and more extensive legislative functions and therefore includes the authority not only to regulate but also to establish new legal authority and to raise funds for necessary programs. As a result, it is likely that the State could adopt and implement a broader range of RACM.

Because there are both a 24-hour and an annual PM–10 standard, EPA must evaluate whether each measure is reasonably available for each standard. However, except for the de minimis criterion discussed later, the criteria EPA used to determine potential RACM are equally applicable to both PM–10 standards, that is, each criterion and the results of applying the criterion to a measure do not vary depending on whether the measure is being evaluated for the 24-hour or annual standard. As a result, a completely separate RACM analysis for each standard is not warranted and has not been performed.

[19] The 1991 MAG plan identified 79 potential RACM with an additional 82 potential measures identified from public comment. Many of these public comment measures, however, duplicated measures on the original list of 79.

3. Federal Implementation Criteria

a. Applicability to the Phoenix Area. Before a measure can be considered as potential RACM, EPA must first determine if the measure would have any inherent potential to reduce PM–10 emissions in the Phoenix area. Some of the listed measures cover sources that are not represented in the Phoenix area, such as marine vessel operations [20] and deicing materials, and were rejected from further evaluation on this basis.

In addition, many of the 99 measures were taken from the ozone or CO air quality plans for the Phoenix area and are primarily intended to reduce CO or ozone precursor emissions. Several of these measures do not reduce PM–10 emissions. For example, since PM–10 emissions from both tailpipes and re-entrained dust from paved roads are independent of the speed of vehicles, measures that simply improve traffic flow and thus improve overall traffic speeds have no effect on primarily-emitted PM–10. [21]

Note that this criterion is not addressing whether the measure could be implemented in the Phoenix area in a manner that would achieve PM–10 emission reductions. Implementation feasibility will be considered as part of the technical feasibility criterion below.

b. Existing RACM. In some instances, EPA has already SIP-approved a measure or very similar measure as RACM or has promulgated at the federal level a measure that it considers to be RACM. Where EPA has already determined a measure to be RACM, no further analysis of the measure is necessary.

c. Legal Authority. EPA must have the legal authority under the Clean Air Act to promulgate, implement and enforce a measure, and must not be preempted from promulgating, implementing, or enforcing it by other federal statutes, regulations or court orders before it considers a measure reasonably available. EPA's FIP authority under CAA section 110(c) is broad (see section II.A.3. above); however, the Agency is constrained in specific instances by the Act itself. See e.g., CAA section 110(a)(5)(A)(i) (prohibition on indirect source review programs) and section 110(c)(2)(B) (prohibition on parking surcharges).

Additionally, EPA's authority to promulgate measures in a FIP which would require the State to enact legislation or expend state funds is limited. EPA may require the State to enact legislation or expend its funds if the FIP measures affect the pollution-creating activities of the State, but may not do so if the effect is to govern the pollution-creating activities of others. For example, EPA could not require a state to expand a mass transit system in order to reduce emissions from private automobiles. EPA could, however, require a state to retrofit state-owned buses to reduce emissions from those buses. For a detailed discussion of this issue, see 52 FR 23263, 23291–23292 (February 5, 1994) (proposed ozone and CO FIP for the South Coast Air Basin).

4. Application of Federal Implementation Criteria

Table 1 provides an overview of the application of the above federal implementation criteria to the 99 measures. Table 1 also identifies which measures EPA has already approved as RACM or has already promulgated a federal measure that it considers RACM (e.g., diesel fuel standards). Of the 99 measures, 21 were eliminated because the sources do not exist in the Phoenix area or the measure does not beneficially affect PM–10 emissions, 11 because EPA had already approved or promulgated RACM, and 11 measures because EPA does not have the legal authority to adopt and/or implement the measure. Consequently, 56 measures were considered for inclusion in the proposed FIP. A more detailed discussion of EPA's reasons for rejecting a measure can be found in the Technical Support Document for today's proposed action.

In order to evaluate its ability to implement each of these measures, EPA had to first identify how it would implement the measure. EPA considered three basic methods of implementation: (1) by rule requiring the owner/operator of the source to implement the control, (2) by direct action (e.g., EPA would pave a road), or (3) by providing additional funding to the State or local agency to implement the measure (e.g., expand MAG ridesharing). The implementation method(s) assumed for a measure is indicated in Table 1 by the number in parentheses after the description of the measure. These numbers correspond to the numbers above.

Note: Where a measure is not applicable to the Phoenix area or where the Agency lacks legal authority, EPA has not analyzed the measure for the remaining criteria. This is indicated by dashes in a column. A question mark in a legal authority column indicates that EPA's legal authority is uncertain at this time; however, for the purposes of this analysis, question marks are treated as yeses.

TABLE 1.—MEASURES APPROPRIATE FOR FEDERAL IMPLEMENTATION

Source category and measure	Appropriate to PHX PM–10	No approved RACM	Legal authorization	Available federal measures
A.1. Paved Road Dust—Reduce Dust (Silt) Loading				
1. Pave, vegetate, or chemically stabilize access points where unpaved traffic surfaces adjoin paved roads (1)	Y	Y	Y	Y
2. Require haul trucks to be covered (1)	Y	Y	Y	Y
3. Provide for traffic rerouting/rapid clean-up of temporary sources of dust (water erosion, track out, material spills) (1)	Y	Y/N	Y	Y
4. Improved material specification for deicing materials (1)	N	.....	.....	N
5 Require curbing and pave or stabilize road shoulders (1)	Y	Y	?	Y
6. Provide for stormwater drainage to prevent water erosion onto paved roads (2/3)	Y	Y	?	Y
7. Mitigation of freeway construction impacts (1)	Y	Y/N	Y	Y
A.2. Paved Road Dust/Tailpipe Emissions—Reduce VMT				
1. Implement short range transit improvements (2/3)	Y	Y	?	Y
2. Implement long range transit improvements (2/3)	Y	Y	?	Y

[20] Marine vessel operations here mean commercial port traffic operations and not pleasure or recreational boating operations. Emissions from pleasure/recreational boat engines are covered under non-road engine standards.

[21] Nor do such flow improvements have a beneficial effect on secondary particulate levels since emissions of the major PM–10 precursor from on-road motor vehicles, NOx, increase with speed.

TABLE 1.—MEASURES APPROPRIATE FOR FEDERAL IMPLEMENTATION—Continued

Source category and measure	Appropriate to PHX PM–10	No approved RACM	Legal authorization	Available federal measures
3. Require exclusive bus lanes on arterials and freeways (2/3)	Y	Y	?	Y
4. Expand MAG rideshare program (2/3)	Y	Y	Y	Y
5. Adopt trip reduction ordinance	Y	Y	Y	Y
6. Establish voluntary no drive days (2/3)	Y	Y	Y	Y
7. Establish an areawide public awareness program (2/3)	Y	Y	Y	Y
8. Build/establish park and ride lots (2/3)	Y	Y	Y	Y
9. Provide employees financial incentives (e.g., zero bus fares) in lieu of parking (1)	Y	Y	Y	Y
10. Require employers to provide preferential parking for car and van pools (1)	Y	Y	Y	Y
11. Require mandatory parking charges for employees (1)	.....	.....	N	N
12. Build HOV lanes on freeways (3)	Y	Y	?	Y
13. Build HOV lanes on arterials (3)	Y	Y	?	Y
14. Build HOV ramps which bypass metering signals (3)	Y	Y	?	Y
15. Promote increased bicycle use (3)	Y	Y	Y	Y
16. Provide or require bicycle travel (e.g., lanes) and support facilities (e.g., lockers and racks) (3)	Y	Y	?	Y
17. Promote pedestrian travel through provisions of pedestrian facilities (e.g. sidewalks) (3)	Y	Y	?	Y
18. Provide pedestrian overpasses (3)	Y	Y	?	Y
19. Promote the use of/require employers to provide alternative work hours (1)	Y	Y	Y	Y
20. Promote the use of/require employers to provide alternative work weeks (1)	Y	Y	Y	Y
21. Promote the use of telecommuting (1)	Y	Y	Y	Y
22. Promote the use of teleconferencing (1/2/3)	Y	Y	Y	Y
23. Provide auto free zones and pedestrian malls (2/3)	Y	Y	N	N
24. Provide vanpool purchase incentives such as tax breaks (1)	Y	Y	N	N
25. Require merchants to provide alternative transportation incentives to customers (1)	Y	Y	Y	Y
26. Implement congestion pricing (2/3)	Y	Y	N	N
27. Require non-employee parking to be priced (1)	Y	Y	N	N
28. Impose fee on vehicles related to emissions (smog fees) (1)	Y	Y	Y	Y
29. Encourage private sector transit by state deregulation (1)	N	.....	.....	N
30. Evaluate & mitigate air quality impacts from new development (indirect source review) (1)	Y	Y	N	N
31. Require increased land use density along transit routes (1)	Y	Y	N	N
32. Provide a fee-based tradable travel permit program (1/2)	Y	Y	N	N
33. Set up system of road pricing (2/3)	Y	Y	N	N
B. On-Road Vehicle Exhaust—Tailpipe and Non-VMT Reduction Measures				
1. Expand current I/M to all model years (1/2/3)	Y	Y	Y	Y
2. Expand the current I/M program statewide (1/2/3)	Y	Y	Y	Y
3. Expand the current I/M program countywide (1/2/3)	Y	Y	Y	Y
4. Require the use of No. 1 diesel fuel (1)	Y	N	Y	N
5. Require clean fuels for fleet vehicles (1)	Y	Y	Y	Y
6. CA new car standards (1)	Y	Y	Y	Y
7. Reduce cold start emissions (1)	N	.....	.....	N
8. Scrap higher polluting vehicles (2/3)	Y	Y	Y	Y
9. Reduce idling at drive up facilities (1)	N	.....	.....	N
10. More strictly enforce traffic, parking, air pollution regulations (2) [1]	Y	Y	N	N
11. Freeway surveillance (2/3)	N	.....	.....	N
12. Ramp metering & signage (2/3)	N	.....	.....	N
13. Traffic signal synchronization (1/2/3)	N	.....	.....	N
14. Reversible lanes on arterials (1/2/3)	N	.....	.....	N
15. One way streets (1/2/3)	N	.....	.....	N
16. Truck restrictions during peak periods (1/2/3)	N	.....	.....	N
17. Intersection improvements (2/3)	N	.....	.....	N
18. On street parking restrictions (1/2/3)	N	.....	.....	N
19. Bus pullouts in curbs (1/2/3)	N	.....	.....	N
20. Alternative fuels for buses/electric shuttle buses (1)	Y	Y	Y	Y
21. Emission controls on public diesel vehicles (1)	Y	N	.....	N
C. Dust from Unpaved Road/Parking Lot/Disturbed Vacant Lots				
1. Pave or otherwise stabilize permanent unpaved haul roads, and parking or staging areas at commercial, municipal, or industrial facilities (1)	Y	N	.....	N
2. Require sources to submit dust control plans (1)	Y	[2] N/Y	Y	Y
3. Develop traffic reduction plans on unpaved roads (1)	Y	Y	Y	Y
4. Limit use of recreational vehicles on open land (1)	Y	Y	Y	Y
5. Pave or stabilize unpaved roads (1)	Y	Y	Y	Y
6. Pave or stabilize unpaved parking areas (1)	Y	Y	Y	Y
7. Require controls on material storage piles (1)	Y	N	.....	N

TABLE 1.—MEASURES APPROPRIATE FOR FEDERAL IMPLEMENTATION—Continued

Source category and measure	Appropriate to PHX PM–10	No approved RACM	Legal authorization	Available federal measures
8. Require stabilization of wind erodible soils (1)	Y	Y	Y	Y
9. Require windbreaks, watering, paving, vegetating for windblown dust (1)	Y	Y	Y	Y
10. Restrict blowers for landscaping (1)	Y	Y	Y	Y
D. Agricultural Sources				
1. Rely on soil conservation requirements (e.g., conservation plans) of the Food Security Act (1)	Y	Y	Y	Y
2. Require windbreaks for agricultural sources (1)	Y	Y	Y	Y
E. Residential Wood Combustion (RWC)				
1. Establish an episodic curtailment program for RWC (1/2/3)	Y	N	.....	N
2. Establish a public education/information program for RWC (2/3)	Y	N	.....	N
3. Encourage the improved performance of RWC devices (1)	Y	N	.....	N
4. Provide inducements to reduce number of RWC devices (1/2/3)	Y	N	.....	N
F. Other Area Sources				
1. Develop a smoke management program for prescribed burns (1)	Y	N	.....	N
G. Point Sources				
1. RACT for stationary sources (1)	Y	N	.....	N
H. Marine Vessel/Ports				
1. Divert port related truck traffic to rail (1)	N	.....	.....	N
2. Control emissions from ship berthing facilities (1)	N	.....	.....	N
3. Control fugitive emissions from marine vessels (1)	N	.....	.....	N
4. Control emissions from marine diesel operations (1)	N	.....	.....	N
5. Limit the sulfur content of marine fuel (1)	N	.....	.....	N
I. Locomotives				
1. Reduce rail crossings (1)	Y	Y	N	N
2. Control switching locomotives (1)	Y	Y	Y	Y
3. Electrify rail lines (1)	Y	Y	Y	Y
J. Airplanes/Airport Ground Equipment				
1. Centralized airport ground power systems (1)	Y	Y	Y	Y
2. Reduce emissions from airport ground access vehicles (1)	Y	Y	Y	Y
3. Establish tighter emissions standards for new jet engines (1)	Y	Y	Y	Y
4. Control emissions from aircraft and ground service vehicles (1)	Y	Y	Y	Y
5. Require replacement of high emitting aircraft (1)	Y	Y	Y	Y
6. Require general aviation vapor recovery (1)	N	.....	.....	N
K. Other Non-Road Engines				
1. Establish emission standards for small utility equipment (1)	Y	N	.....	N
2. Establish emission standards for new heavy duty construction equipment (1)	Y	Y	.....	Y
3. Establish emission standards for off road motorcycles (1)	Y	Y	Y	Y
L. Miscellaneous Measures				
1. Expand PM–10 monitoring network (2/3)	N	.....	.....	N
2. Move state fair to a different time of the year (1)	N	.....	.....	N
3. Winter daylight savings time (1)	N	.....	.....	N

[1] EPA has no legal authority to enforce local measures, such as traffic and parking regulations, which are not approved into the SIP. Most PM–10 air pollution regulations are separately listed in this table.

[2] Dust control plans are a requirement for sources which are required to obtain a permit from the County, but are not a requirement for unpermitted sources. A dust control plan is a method for identifying, implementing and enforcing dust control measures for and on a particular source, rather than a dust control measure in and of itself.

5. RACM Criteria

The General Preamble suggests three criteria for excluding measures as RACM: de minimis source, technological infeasibility, and the cost of control in the nonattainment area. EPA's proposed definitions for each of these criteria are described below.

a. De Minimis Source. EPA proposes to rely on the criteria applied under its new source permitting programs (40 CFR 51.165(b)) as a guide in determining when a source category is de minimis for the purposes of determining whether RACM must be applied: a de minimis source or source category is one that contributes less than

5 g/μ_3 of PM–10 to a location of expected 24-hour exceedances and 1 μg/m^3 to a location of expected annual violation. To be a considered a de minimis source for the purposes of this RACM analysis, the source had to be de minimis for both the 24-hour and annual standard. As discussed previously in section IV.B., focusing on what is reasonable and practicable for significant sources is consistent with the CAA's scheme of graduated controls for PM.

EPA has used the results from the State's microscale plan to identify which source categories are significant and de minimis for the 24-hour standard for the purposes of RACM analysis. As discussed in EPA's final action on the microscale plan (62 FR 41856), the significant source categories for the 24-hour standard are unpaved roads, unpaved parking lots, disturbed cleared areas (i.e., vacant lots), agricultural fields, and agricultural aprons. 62 FR 31031. De minimis source categories for the 24-hour standard are industrial yards, surface mining, other industrial activities, paved roads, trackout, and paved parking lots.

To determine significant and de minimis sources for the annual standard for this RACM analysis, EPA has relied on the results at the Greenwood monitoring site in the State's Urban Airshed Model (UAM) simulation, performed as part of ongoing work for Maricopa's serious area PM–10 plan, see MAG Modeling TSD, Table 6.9. The complete list of significant and de minimis sources for this RACM determination can be found in Table 2 below. Where the air quality modeling provides only a single impact number for a group of source categories (e.g., ''other area sources'' which contains area source fuel combustion, open burning, and emissions from charbroiling), EPA has assumed that the impact of an individual source category is proportional to its presence in the inventory for that group of source categories. In total, the de minimis categories account for less than 10 percent of the total exceedance value at the Greenwood monitor.[22–24, 25]

TABLE 2.—SIGNIFICANT AND DE MINIMIS SOURCE CATEGORIES FOR DETERMINING RACM FOR THE ANNUAL STANDARD

PM–10 Source category	Annual impact at the Greenwood Monitor (μg/m^3)
Significant Source Categories	
Paved road dust	20.0
Unpaved road dust	2.9
Construction/earthmoving	5.4
Non-road engines	1.2
De Minimis Source Categories	
On-road mobile sources:	
Gasoline-powered	0.3
Diesel-powered	0.9
Agricultural dust	0.2
Residential wood combustion	0.4
Other area sources:	
Fuel combustion	0.4
Charbroiling	0.5
Other	0.5
Other non-road engines:	
Locomotives	0.1
Airport ground support	0.1
Major Point Sources	0.2
Windblown dust	0.4

b. Technological Feasibility. As the term is proposed to be used here, technological feasibility means that the control measure is currently available and being implemented elsewhere and that the measure can achieve PM–10 emission reductions in Maricopa County prior to the attainment deadline of December 31, 2001. EPA has long held that it would not consider a measure ''reasonable'' if it could not be implemented on a schedule that would advance the date for attainment in the area. See 57 FR 13498, 13560.

For some measures (e.g., trip reduction ordinances), the State has already implemented SIP-approved controls. For these measures, EPA has evaluated the potential emission reduction benefit of additional federal controls from a baseline that reflects the existing controls.

Finally, one measure on the list, restrictions on blowers for landscaping, would in order to be effective require a complete ban on leaf blowers. EPA does not believe that, under the CAA's graduated level of controls for PM–10, that eliminating a source completely constitutes a reasonable level of control.

c. Cost of Implementation. In considering the cost of implementing a measure in an area, the General Preamble suggests that in case of public sector sources and control measures, the cost evaluation should consider the impact of the reasonableness of the measures on the governmental entity that must bear the responsibility for their implementation. 57 FR 13541. This statement in the General Preamble is a recognition, as noted in section IV.B.,

[22–24] This de minimis RACM criterion is invoked here solely for the purposes of determining which source categories need RACM and not for determining which source categories need controls for attainment. See Section IV.B.

[25] EPA has already approved RACM for some of the de minimis sources, e.g., major stationary sources, residential wood combustion, non-road engines). Also, EPA notes that some de minimis source categories already have substantial SIP-approved controls on them (e.g., clean fuels and inspection and maintenance program for on-road mobile sources) although EPA has not formally found these controls to be RACM under the moderate area PM–10 RACM requirement in section 189(a)(1)(C).

that the regulatory scheme for PM–10 in subpart 4 establishes two graduated levels of control, RACM and BACM, depending on the severity of the air quality problem. As such, greater latitude is given responsible entities to determine what is feasible and practicable when selecting their initial RACM control strategy. Thus the nature and scope of a potential control measure, including such factors as the degree of capital expenditures required and lead-time needed for legislative consideration, operational and/or infrastructural development needs, etc., are appropriate determinants of what measures may be ''reasonably available.''

In promulgating a FIP, EPA is the primary implementing entity. As such, EPA must evaluate the reasonableness of potential RACM based on its financial and resource capabilities (in the manner described above for other governmental entities) to implement the measure . The Agency notes that its duty to promulgate and implement FIPs is in addition to rather than a replacement of its other duties under the Clean Air Act. As such, where implementing a potental RACM FIP measure would require the Agency to expend substantial efforts to acquire needed resources, including financial resources, EPA could also take such factors into consideration in determining whether the measure is practicable and, thus, reasonable to implement.

A general discussion of the above-described types of constraints in implementing measures for the Phoenix area can be found in the 1990 CO FIP proposal. 55 FR 41210. While EPA may undertake the necessary steps to acquire resources and funding, e.g., by diverting personnel and funds or by submitting budget supplement requests to Congress, to implement and enforce a FIP in Maricopa County or anywhere else in the nation, the feasibility of such efforts, depending on the nature and scope of the work needed to implement the proposed measure, may well exceed what may fairly be considered reasonable or practicable. EPA has also discussed generally the resource constraints associated with federal implementation of transportation control measures in its proposal of an ozone and CO FIP for the Los Angeles area. See 55 FR 36458, 36517 (September 5, 1990).

Examples of measures on the list that are generally not reasonably within EPA's current resource constraints to implement are measures which require substantial capital or operational expenditures. Examples of measures in this category include building high occupancy vehicle lanes, funding expansion of mass transit, and constructing substantial traffic flow improvements.

6. Application of RACM Criteria

EPA applied these proposed RACM criteria to the 56 measures in Table 1 that were found to be appropriate for federal implementation. The results of this RACM screening are given in Table 3. Of the 56 measures, 46 were eliminated: 17 because they apply to de minimis sources; 20 because a federal measure would not improve on the emission reduction benefit from a SIP-approved measure; 5 because the measure could not be feasibly implemented prior to the attainment date, one because the measure required elimination of the source completely which EPA believes is unreasonable, and 3 because of cost considerations. A more detailed discussion of EPA's justifications for rejecting potential RACM measures based on these RACM criteria can be found in the TSD for this proposed rulemaking.

As seen from Table 3, ten measures remain after the application of the RACM criteria. These measures are a variety of potential fugitive dust controls for unpaved roads, unpaved parking lots, disturbed cleared land, and agriculture. Therefore, as described in detail in section V.A.7, EPA is proposing federal RACM measures to address these fugitive dust sources including a federal fugitive dust rule and an enforceable commitment for the agricultural sector.[26]

TABLE 3.—FIP RACM EVALUATION [1]

Source category and measure	De Minim is Source	Technically feasible	Reasonable implementation cost	FIP RACM
A.1. Paved Road Dust—Reduce Dust (Silt) Loading				
1. Pave, vegetate, or chemically stabilize access points where unpaved traffic surfaces adjoin paved roads (1)	N	Y	Y	Y
2. Require haul trucks to be covered (1)	Unk [2]	N–1	.....	N
3. Provide for traffic rerouting/rapid clean-up of temporary sources of dust (water erosion, track out, material spills) (1)	Unk	N–1	.....	N
5. Require curbing and pave or stabilize road shoulders (1)	Unk	N–1	.....	N
6. Provide for stormwater drainage to prevent water erosion onto paved roads (2/3)	N	N–1	N	N
7. Mitigation of freeway construction impacts (1)	Unk	N–1	.....	N
A.2. Paved Road Dust/Tailpipe Emissions—Reduce VMT				
1. Implement short range transit improvements (2/3)	N	Y	N	N
2. Implement long range transit improvements (2/3)	N	N–2	N	N
3. Require exclusive bus lanes on arterials and freeways (2/3)	N	N–2	N	N
4. Expand MAG rideshare program (2/3)	N	Y	N	N
5. Adopt trip reduction ordinance (1)	N	N–1	.....	N
6. Establish a voluntary no drive days (1)	N	N–1	.....	N
7. Establish an areawide public awareness program (1)	N	N–1	.....	N
8. Build/establish park and ride lots	N	N–1	N	N
9. Provide employees financial incentives (e.g., zero bus fares) in lieu of parking (1)	N	N–1	.....	N

[26] One significant source category for the annual standard, paved roads, is not currently being addressed comprehensively through SIP-approved RACM or proposed FIP RACM. While EPA analyzed 40 potential measures for this source category (see categories A.1. and A.2. on Table 1), only one of these measures was found to be a FIP RACM. EPA notes, however, that the State has a number of SIP-approved measures already in place, including a trip reduction program, that reduce emissions from this category.

TABLE 3.—FIP RACM EVALUATION [1]—Continued

Source category and measure	De Minim is Source	Technically feasible	Reasonable implementation cost	FIP RACM
10. Require employers to provide preferential parking for car and van pools (1)	N	N–1	.....	N
12. Build HOV lanes on freeways (3)	N	N–1	N	N
13. Build HOV lanes on arterials (3)	N	N–2	N	N
14. Build HOV ramps which bypass metering signals (3)	N	N–1	N	N
15. Promote increased bicycle use (3)	N	N–1	N	N
16. Provide or require bicycle travel (e.g., lanes) and support facilities (e.g., lockers and racks) (3)	N	N–1	N	N
17. Promote pedestrian travel through provisions of pedestrian facilities (e.g. sidewalks) (3)	N	N–1	N	N
18. Provide pedestrian overpasses (3)	N	N–1	N	N
19. Promote the use of/require employers to provide alternative work hours (1)	N	N–1	.....	N
20. Promote the use of/require employers to provide alternative work weeks (1)	N	N–1	.....	N
21. Promote the use of telecommuting (1)	N	N–1	.....	N
22. Promote the use of teleconferencing (1/2/3)	N	N–1	.....	N
25. Require merchant to provide alternative transportation incentives to customers (1)	N	N–2	.....	N
28. Impose fee on vehicles related to emissions (smog fees) (1)	N	N–2	.....	N
B. On-Road Vehicle Exhaust—Tailpipe and Non-VMT Reduction Measures				
1. Expand current I/M to all model years (1/2/3)	Y	.....	.....	N
2. Expand the current I/M program state wide (1/2/3)	Y	.....	.....	N
3. Expand the current I/M program county wide	Y	.....	.....	N
5. Require clean fuels for fleet vehicles	Y	.....	.....	N
6. CA new car standards	Y	.....	.....	N
8. Scrap higher polluting vehicles (2/3)	Y	.....	.....	N
20. Alternative fuels for buses/electric shuttle buses (1)	Y	.....	.....	N
21. Emission controls on public diesel vehicles (1)	Y	.....	.....	N
C. Dust from Unpaved Road/Parking Lot/Disturbed Vacant Lots				
2. Require sources to submit dust control plans (1)	N	Y	Y	Y
3. Develop traffic reduction plans on unpaved roads (1)	N	Y	Y	Y
4. Limit use of recreational vehicles on open land (1)	N	Y	Y	Y
5. Pave or stabilize unpaved roads (1)	N	Y	Y	Y
6. Pave or stabilize unpaved parking areas (1)	N	Y	Y	Y
8. Require stabilization of wind erodible soils (1)	N	Y	Y	Y
9. Require windbreaks, watering, paving, vegetating for windblown dust (1)	N	Y	Y	Y
10. Restrict blowers for landscaping (1)	Unk.	N–3	.....	N
D. Agricultural Sources				
1. Rely on soil conservation requirements (e.g., conservation plans) of the Food Security Act (1)	N	Y	Y	Y
2. Require windbreaks for agricultural sources (1)	N	Y	Y	Y
I. Locomotives				
2. Control switching locomotives (1)	Y	.....	.....	N
3. Require electrification of rail lines (1)	Y	.....	.....	N
J. Airplanes/Airport Ground Equipment				
1. Centralized airport ground power systems (1)	Y	.....	.....	N
2. Reduce emissions from airport ground access vehicles (1)	Y	.....	.....	N
3. Establish tighter emissions standards for new jet engines (1)	Y	.....	.....	N
4. Control emissions from aircraft and ground service vehicles (1)	Y	.....	.....	N
5. Require replacement of high emitting aircraft (1)	Y	.....	.....	N
K. Other Non-Road Engines				
2. Establish emission standards for new heavy duty construction equipment (1)	Y	.....	.....	N
3. Establish emission standards for off-road motorcycles (1)	Y	.....	.....	N

[1] Technological feasibility codes on Table 3 are:

N–1. Measure is already in place in local jurisdiction. Additional federal rule would not result in additional emission reductions.

N–2. Measure is very unlikely to result in measurable emission reductions in the Phoenix area because technology is not available and/or demonstrated, technology will not be available prior to the attainment date, and/or supporting infrastructure is absent (e.g., a viable transit system is necessary in order for merchant transportation incentives to be effective).

N–3. Measure involves elimination of the source and therefore does not represent a reasonable level of control.

[2] While paved (i.e., re-entrained) road dust is clearly a significant source of PM–10 in the Phoenix nonattainment area, the contribution of unpaved shoulders, material from haul trucks, all track out and accidental spills to this source category is unknown.

a. Commitment for Agricultural Sector. (1) Summary of Proposed Commitment and Approach EPA's RACM analysis above indicates that RACM controls are needed for agricultural sources of PM–10. Currently, RACM is not being fully implemented for agricultural fields and aprons in the Phoenix area.[27–29] Therefore, federal measures are needed to reduce PM–10 from these sources.

EPA is proposing an enforceable commitment to adopt and implement RACM as required by CAA section 189(a)(1)(C) for the agricultural sector. In order to develop the RACM, as discussed below, EPA intends to use a stakeholder approach which, it is anticipated, will result in the development of best management practices (BMPs) that provide PM–10 emission reductions from agricultural sources in the nonattainment area.

(2) Background. The microscale plan[30] demonstrated that wind-blown dust from agricultural fields and aprons (i.e., farm access roads and equipment turnaround areas) significantly contributes to exceedances of the 24-hour standard at the Gilbert and West Chandler monitoring sites. These sites are representative of the numerous agricultural-urban interface areas located in the nonattainment area.

The Gilbert monitoring site is located on the grounds of the City of Gilbert's wastewater treatment plant and has agricultural fields and aprons to its north, an unpaved and paved parking lots to the north and west, and a city park to the south. Modeling showed that windblown dust from agricultural fields and unpaved parking lots was the largest contributor to the exceedance at the Gilbert monitor. The West Chandler monitoring site is bordered on the west by agricultural fields and the right of way for the Price Road/Freeway, which was under construction in early 1995. Modeling showed that windblown dust, mainly from agricultural fields and road construction, was the largest contributor to the exceedance at the West Chandler monitor.

There are approximately 600 growers farming approximately 300,000 acres of land in Maricopa County. An estimated 63 percent of the agricultural activity in Maricopa County occurs within the nonattainment area. Upland cotton (112,000 acres), alfalfa (54,000 acres), and durum wheat (45,000 acres) comprised over two-thirds of the crop acreage in Maricopa County during 1996. Cash receipts for crops grown in 1996 totaled over $440 million, ranking Maricopa County second in the state. The area is characterized by very low rainfall (7 inches per year) and desert conditions.

Maricopa County is undergoing rapid urbanization with agricultural land being converted into other uses at a rate of approximately 6,000 acres per year. As this urbanization continues, the amount of PM–10 associated with agricultural lands will decrease because the amount of land being farmed within Maricopa County is shrinking. The 1996 Farm Bill has also affected farming practices in the Maricopa County nonattainment area. See 16 U.S.C. 3801 *et seq.* After 1994, land which had been set aside under a prior U.S. Department of Agriculture (USDA) program was placed in production (primarily alfalfa). The switch from unplanted set-aside to planted alfalfa resulted in a relatively small decrease in PM–10 emissions. Despite the conversion of agricultural lands to other uses and the small increase in agricultural land being put back into production, agricultural sources are expected to continue to contribute to PM–10 emissions for the foreseeable future.

(3) RACM Analysis. EPA evaluated existing agriculture measures in the South Coast Air Basin (SCAB)[31] to assess potential RACM for agriculture for the Phoenix nonattainment area.[32] However, it is important to note that because agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, each PM–10 agricultural strategy is uniquely based on local circumstances. Unlike many stationary sources, which can have many common design features, whether located in California or New Jersey, agricultural sources and activities vary greatly throughout the country.

With respect to Phoenix and the Los Angeles area, EPA determined that the two areas differ in a number of key characteristics (e.g., crops grown, soil types, climate, and number of growers affected). In assessing RACM for agricultural sources, EPA considered the uniqueness of the myriad factors affecting agricultural activity in the nonattainment area. 57 FR 13498, 13540–13541. Based on this initial screening, EPA decided that it would not be responsible to propose the SCAQMD rules at this time because the Agency could not reasonably conclude that their implementation would in fact result in air quality benefits for the nonattainment area. Instead, the SCAQMD rules will be further assessed as part of the BMP development process. This process will allow EPA to take advantage of various local and national agricultural expertise to more fully evaluate whether the SCAQMD rules, portions thereof, or other unique emission reduction strategies would contribute to attainment and, therefore, should be applied in Maricopa County.

[27–29] Application of Rule 310 to agricultural sources including fields and aprons is affected by a provision in section 102 of the rule which incorporates A.R.S. 49–504.4. Section 102 provides that Rule 310 ''shall not be construed so as to prevent normal farm cultural practices.'' Therefore, applicability of the rule to such sources depends on the nature of the dust-generating operation. As such, Rule 310 applies to some operations on agricultural fields and aprons and not to others.

[30] In addition to EPA's standard AP–42 emission methodologies and some other prior special studies for particular source categories, the microscale study included field surveys, aerial photography, examination of activity logs, and interviews with source operators. The study resulted in a substantially better emissions inventory data than is usually available.

[31] EPA identified South Coast Air Quality Management District (SCAQMD) Rule 403.1—Wind Entrainment of Fugitive Dust. This rule applies to any activities which can generate fugitive dust when winds exceed twenty-five miles per hour (mph) in the Coachella Valley Planning PM–10 nonattainment area. Rule 403.1 requires that any person involved in activities which both occur in the Coachella Valley Blowsand Zone and are capable of generating fugitive dust to stabilize deposits using water or dust suppressants, or install wind breaks, and also restricts agricultural tilling when wind speeds exceed twenty-five mph and requires that inactive disturbed surface areas be stabilized using water or dust suppressants.

EPA also identified SCAQMD 403—Fugitive Dust (amended February 14, 1997), which requires any person generating fugitive dust from an active operation, open storage pile, or disturbed surface to implement RACM or BACM listed in the rule to minimize fugitive dust (e.g., apply chemical stabilizers on disturbed surface areas; apply water to unstabilized areas three times per day). Subject sources may submit a dust control plan in lieu of the control measures listed in the rule.

Finally, EPA identified SCAQMD Rule 1186—PM10 Emissions From Paved and Unpaved Roads, and Livestock Operations, which is intended to reduce PM–10 entrained in the ambient air as a result of vehicular travel on paved and unpaved roads, and at livestock operations. The requirements affecting livestock operations include: cease hay grinding between 2 and 5 p.m. if visible emissions extend 50 feet from the source; and treat unpaved access connections and unpaved feed access areas using either pavement, gravel, or asphalt.

A more detailed discussion of the provisions found in these rules can be found in the Technical Support Document for today's proposed action.

[32] EPA recognizes the role of USDA's Natural Resources Conservation Service (NRCS) in working with individual growers to voluntarily develop Soil Conservation Plans (SCPs). Because SCPs in the Maricopa County area are voluntary (approximately one-third of the growers have a SCP), grower-initiated, and have very minimal air quality benefits as currently designed, the use of SCPs in Maricopa County was determined to not meet RACM and thus not considered a viable option for the proposed FIP. See 57 FR 13498, 13541. In addition, representatives from NRCS and the Arizona Farm Bureau Federation have indicated to EPA that they do not support using SCPs for RACM.

(4) Proposed Commitment

(i) Discussions With Stakeholders. In recognition of the need to address agriculture's contribution to the PM–10 exceedences, the microscale plan included a March 27, 1997 letter signed by the Arizona Department of Environmental Quality (ADEQ), MCESD and the NRCS. The letter stated the intent of the three agencies to work cooperatively toward strategies that address PM–10 emissions from agricultural lands within Maricopa County. The three agencies sponsored meetings in March and May, 1997 which brought stakeholders together to discuss agriculture and PM–10. At the same time, and into the summer of 1997, MAG was working with the Maricopa County Farm Bureau on possible emission controls for agricultural lands as part of the PM–10 serious area plan development. Also during the summer of 1997, EPA held meetings with ADEQ, MAG, MCESD, and NRCS to discuss potential strategies to reduce PM–10 from agricultural lands.

Because there were two separate ongoing efforts with respect to PM–10 emissions from agricultural sources, as described above, EPA used these meetings to keep apprised of the progress of the two efforts, as well as to discuss implementation issues related to agricultural control measures. The MAG discussions with the Maricopa Farm Bureau resulted in the identification of several potential PM–10 control measures by early fall, 1997. These measures were voted on and approved by the Maricopa County Farm Bureau Board in September, 1997. At that time, EPA decided that a joint discussion with ADEQ, MCSED, MAG, NRCS, and the Farm Bureau would be beneficial to both the FIP and SIP processes.

Thereafter, EPA contacted the NRCS, the Arizona Farm Bureau Federation, and other stakeholders and arranged for a November 12–14, 1997 tour of agricultural activities to better understand their impact in Maricopa County. Several meetings were held with these same stakeholders. The meetings provided an opportunity for EPA to discuss the upcoming FIP proposal and the need to work collaboratively [33] on strategies addressing agriculture and PM–10. The tour and subsequent meetings allowed EPA to work directly with the leaders in the Maricopa County agricultural and regulatory community and set the stage for future discussions on possible strategies for reducing PM–10 from agriculture in the area. Subsequent meetings on December 2 and 16, 1997 among EPA, Farm Bureau representatives, farmers, NRCS, ADEQ, MCESD, and MAG resulted in a general consensus on using a BMP approach to develop measures to reduce PM–10 from agriculture. On January 7, 1998, EPA Region IX sent a letter to the Maricopa County Farm Bureau stating EPA's intention to include the BMP approach in the proposed FIP. On January 21, 1998, the Maricopa County Farm Bureau sent a letter to EPA Region IX indicating their general support for the BMP approach. The letter also provided their recommendations on milestones and timeframe needed for a successful BMP approach.

(ii) BMP Approach. The proposed BMP approach for addressing PM–10 from agricultural sources could be modeled after an analogous BMP approach used for managing fertilizer applications and protecting groundwater in Arizona. Under the nitrogen fertilizer BMP program, legislation was passed in the late 1980s giving the Director of ADEQ the authority to oversee the development and implementation of BMPs. An Advisory Committee, comprised of representatives from key government agencies, universities, and the agricultural community was established to develop and recommend BMPs for adoption by ADEQ. After adoption of the BMPs, supplemental guidance documents were developed by the University of Arizona to assist growers, and an extensive grower education campaign was undertaken to increase the likelihood for successful BMP implementation. The BMPs eventually became part of the Arizona Administrative Code (Title 18, Chapter 9, Article 2), which requires that all persons engaged in the application of nitrogen fertilizers be issued a general permit and comply with the six agricultural BMPs stated in the law. A similar approach was also used to develop BMPs for concentrated animal feeding operations in Arizona.

(iii) FIP Proposal. EPA is proposing an enforceable commitment to adopt and implement RACM to reduce PM–10 emissions from agricultural sources. The proposed FIP commitment includes a series of enforceable milestones and due dates listed in Table 4 to assure adoption and implementation of RACM. EPA would initially convene a stakeholder-based process to begin formal development of draft BMPs. Stakeholder groups represented will likely include but not be limited to the Arizona Farm Bureau Federation, Maricopa County Farm Bureau, ADEQ, MAG, MCESD, NRCS, Cooperative Extension, the University of Arizona, tribes, and environmental and/or public health organizations. This effort would build upon the stakeholder-based discussions which occurred in 1997 and early 1998. By September 1998, the stakeholders would begin to draft BMPs. Potential BMPs likely to be considered include but are not limited to: windbreaks, vegetative covers, chemical or physical soil stabilizers, improved tillage practices, tillage limitations during high wind events, speed reductions on unpaved or untreated farm roads, and tillage pre-irrigation. The milestones by which EPA proposes to complete various aspects of BMP development and implementation are as follows. By September 1999, EPA will have drafted the BMPs developed for official public comment, which will occur through a Notice of Proposed Rulemaking. After public comment and additional stakeholder meetings, EPA will finalize the BMPs in a Notice of Final Rulemaking. In June 2000, BMP implementation will begin with an extensive collaborative public outreach and education campaign. Guidance documents would be developed to assist growers with implementation of the BMPs. Compliance assistance would also be a key element of the BMP program.

TABLE 4.—PROPOSED DEADLINES FOR EPA ADOPTION/IMPLEMENTATION OF RACM FOR AGRICULTURE IN MARICOPA

Milestones	Due date
Notice of Proposed Rulemaking for RACM	September 1999.
Notice of Final Rulemaking for RACM	April 2000.

[33] In early 1997, the USDA's Agricultural Air Quality Task Force began discussions with EPA on issues related to agriculture and air quality. Over the course of the year, the Task Force drafted a Memorandum of Understanding (MOU) between USDA and EPA that establishs a formal relationship for sharing expertise and involving the agricultural community in air quality issues. The MOU was signed by EPA on February 25, 1998 and by the USDA on 1/14/98. EPA believes that the BMP approach follows the cooperative spirit outlined in the MOU.

TABLE 4.—PROPOSED DEADLINES FOR EPA ADOPTION/IMPLEMENTATION OF RACM FOR AGRICULTURE IN MARICOPA—Continued

Milestones	Due date
RACM implementation	June 2000.

(5) FIP Replacement.

Although EPA is only required in the FIP to meet the CAA RACM requirement, the State is expected, as required for PM–10 serious nonattainment areas, to develop BACM for agricultural sources. The State expects the BACM developed for the serious area plan to also Satisfy any remaining CAA RACM requirements. EPA is committed to working with ADEQ and the other stakeholders to develop a SIP measure to replace the proposed enforceable commitment.

While EPA's intended BMP approach is designed to meet the RACM requirement, the Agency believes it can serve as a potential starting point and model for the development of a State-led SIP process for addressing BACM for agricultural sources. Thus, the stakeholders could potentially build upon the BMP approach initiated for the FIP to address both RACM and BACM requirements for the agricultural sector in the SIP. The Arizona Farm Bureau Federation, the Maricopa County Farm Bureau, NRCS, ADEQ, and other regulatory agencies are currently working collaboratively to develop a State-led BMP process for that purpose. EPA strongly endorses such a process. However, because EPA has not received to date an adequate SIP submittal addressing the implementation of RACM by June 2000 for agricultural sources of PM–10, EPA is proposing an enforceable commitment for those sources as described above.

b. Rule for Unpaved Parking Lots, Unpaved Roads and Vacant Lots. Fugitive dust from unpaved parking lots and unpaved roads is primarily caused by vehicle traffic. When vehicles travel over unpaved surfaces, they raise the silt content (i.e., grind up dirt so as to result in a greater abundance of finer particles). The more vehicles (and the faster they travel) on unpaved surfaces, the more PM–10 is stirred up in clouds of fugitive dust.

On vacant lots, fugitive dust emissions are caused by virtually any activity which disturbs an otherwise naturally stable parcel of land, including earth-moving activities, weed abatement, material dumping and vehicle traffic. Once disturbed, the vacant lot may continuously generate dust until it is restabilized. Since wind conditions affect the amount of dust raised on vacant lots, PM–10 emission impacts may not be fully realized until several days following a disturbance.

MCESD's Rule 310 requires RACM for fugitive dust sources; however, EPA has determined that the County does not enforce the rule for three source categories within the Phoenix PM–10 nonattainment area: unpaved parking lots, unpaved roads and vacant lots. As a result, EPA is having to fulfill the role of primary enforcer of the RACM requirement for these sources and has developed its own proposed rule addressing RACM for these sources.

EPA's regional office in San Francisco, California (EPA Region 9) will have primary responsibility for enforcement of the proposed FIP rule. Given the difficulties that Region 9 will inevitably face in enforcing the RACM requirement in Arizona, EPA has designed a RACM rule that ensures EPA enforcement of the rule will be practicable. Furthermore, EPA believes that the proposed rule will be useful to MCESD in future SIP efforts to control dust from these sources.

In general, EPA believes that all of the RACM requirements of the proposed FIP rule can also be required through enforcement of Rule 310. However, the rule's lack of specificity makes it more likely that the agency enforcing the rule will routinely be called upon to address which RACM should be applied to which source categories. By addressing this issue in the FIP rule itself through detailing specific RACM requirements, EPA hopes to reduce the extent to which sources and others may have to consult with the Agency to determine which RACM are appropriate for a particular source or source category.

The only proposed FIP rule requirement that is not required in Rule 310 is a recordkeeping requirement for owners/operators to maintain records of controls implemented on unpaved roads, unpaved parking lots, and vacant lots in order for EPA to ensure compliance with the rule.[34] The proposed recordkeeping requirements in the FIP rule are simple and straightforward. In many cases, the owner/operator need only retain a purchase receipt or contractor work order for the controls implemented. More information is required when chemical stabilization is applied as a control measure, however, this information is readily available from vendors or easily determined at the time of application.

(1) Summary of Proposed Rule. In developing the proposed FIP rule, EPA utilized the RACM in Rule 310 while drawing upon several additional sources to increase specificity of the measures. A detailed discussion of EPA determinations and references for the proposed rule can be found in the Technical Support Document. Specific requirements of the proposed rule are summarized below.

Unpaved parking lots: Any owners/operators of unpaved parking lots greater than 5,000 square feet are required to pave, chemically stabilize, or apply gravel to the lot within eight months of the rule's effective date. For unpaved parking lots that are used no more than 35 days per year, owners/operators may choose to apply chemical stabilizers within 20 days prior to any day in which over 100 vehicles enter the lot.

Unpaved roads: Any owners/operators of existing public unpaved roads with average daily trip volumes of 150 vehicles or greater are required to pave, chemically stabilize, or apply gravel to the unpaved road by June 10, 2000.

Vacant lots: (1) A Dust Control Plan (as described in section 503) is required for weed abatement operations on vacant lots that disturb 0.10 acres or more of soil by blading, disking, plowing under or other means (excluding mowing, cutting or similar processes in which soil is not disturbed), unless such operations receive an approved permit from Maricopa County Environmental Services Department. (2) Any owners/operators of an urban or suburban open area vacant lot with 0.10 acres or more of disturbed surface area which is unused or undeveloped for more than 15 days are required to establish vegetation, apply dust suppressants, restore to a natural state, or apply gravel to all disturbed surfaces within eight months following the effective date of the proposed rule or within eight months following the initial 15 day

[34] Rule 310 only requires recordkeeping for permitted dust-generating operations.

period of inactivity, whichever is later. (3) Any owners/operators of an urban or suburban open area vacant lot which has a disturbed surface due to motor vehicles (including off-road vehicles) are required to place signs, fencing, shrubs, trees, or cement barriers to prohibit vehicle entry along the access perimeter.

The threshold level of 0.10 acres for weed abatement and disturbed surface areas is the same threshold level for the permitting of construction sites in Rule 310.[35] Currently Rule 310 does not contain a threshold exemption for vacant lots. EPA is requesting comments on whether the 0.1 acre threshold is the appropriate threshold for determining when controls on vacant lots is required.

All categories: As an alternative to compliance with any of the FIP rule requirements (with the exception of the weed abatement provision), owners/operators may use alternative control measures approved by EPA. Proposed alternative control measures must be submitted to EPA for approval prior to the rule's deadline for RACM implementation for the source. Should EPA disapprove an alternative control measure, the owner/operator must begin implementing RACM as required in the rule no later than 60 days after receiving notice of disapproval.

Recordkeeping: Owners/operators are required to maintain records of controls implemented on unpaved roads, unpaved parking lots, and vacant lots.

(2) Discussion. The proposed FIP rule includes three to four RACM options for each source category. In order to ensure that emission reductions are achieved, the FIP rule only specifies control measures which have a reasonably high level of certainty in their control effectiveness and enforcement. However, EPA is willing to consider other measures, and is therefore allowing submittal of alternative control measures for any of the source categories subject to EPA approval.

Surveys of fugitive dust sources and control measures are required to be conducted by EPA or its contractor in the proposed FIP rule in order to improve knowledge of the universe of sources and provide feedback on the rule's effectiveness. The surveys will enable regulators to better estimate the contribution of unpaved roads, unpaved parking lots and vacant lots to Maricopa County's PM–10 inventory, identify control measures that are the most frequently implemented, and study the effectiveness of these measures in controlling fugitive dust.

Tests in order to determine compliance with the proposed FIP rule would be conducted by EPA or its contractor, and do not pose additional requirements on sources subject to the rule. Implementation of some control measures, such as paving unpaved roads, are obvious upon inspection and tests are not necessary to determine compliance. For other control measures, such as application of chemical stabilizers and gravel, a test is needed to determine whether the surface is sufficiently stabilized to prevent or minimize fugitive dust emissions.

For determining whether unpaved roads and unpaved parking lots are stabilized, EPA is proposing visible opacity test methods associated with vehicle use (Reference Method 9, Methods 203A, 203B, and 203C), with opacity readings conducted according to 203C. These methods incorporate a fugitive dust element to Reference Method 9, which is most appropriate for measuring emissions from stationary sources of PM–10. Method 203C allows ''instantaneous'' readings averaged over a period of one minute, taken at 5 second intervals. EPA first proposed Reference Method 9, Methods 203 A, B, and C in 1993 (Appendix M, part 51) and has incorporated public comments into the test methods. While EPA has not yet promulgated the methods, for purposes of federal enforcement of the FIP rule, they can be used as credible evidence until such time as EPA publishes a final rulemaking for the test methods (40 CFR part 52.12).

For determining whether vacant lots have stabilized surfaces, EPA is proposing and requesting comment on test methods concerning visible crusts, vegetation, and threshold friction velocity of soil samples. Information on test methods proposed for this FIP is available in the TSD and the rulemaking docket.

The proposed FIP rule does not preclude the right of any State or locality to adopt or enforce an emission standard or limitation which is more stringent than this rule (Clean Air Act section 116).

(3) Compliance Approach. Upon promulgation of the FIP, EPA will implement its rule for unpaved parking lots, unpaved roads, and vacant lots. Thus, EPA will take on responsibilities that are normally performed by the local air quality regulatory agency, in this case, MCESD. These responsibilities would include such activities as: refining EPA's information on the universe of sources subject to the rule, developing an outreach/compliance assistance program for the affected community, inspecting sources subject to the rule, and following up with an appropriate enforcement response in the event of rule violations.

Although the cities in the Phoenix area have provided information on the sources within their jurisdictions, EPA will be using contractual assistance to obtain additional information on the sources subject to the FIP rule. This information will be used by EPA to perform the surveys described above, to evaluate the rule's effectiveness, and to identify sources for potential inspections. This information can also be used (and EPA will encourage its use) by Maricopa County to better implement Rule 310.

EPA will be implementing the FIP rule by providing resources directly from the Regional Office in San Francisco. Working with the information provided by the contractor, Region 9 will develop a compliance assistance strategy that will ensure that sources subject to the FIP rule are informed about the rule, and understand how the rule applies to them, what their compliance options are, and the need to comply with the provisions in the rule. Once EPA compliance assistance efforts are underway, EPA will inspect these sources for compliance with the FIP rule.

In addition, EPA exercises a traditional oversight role over state and local air quality programs by making periodic visits to the states within Region 9 and conducting joint inspections with the state and/or local regulatory agencies. These joint inspections can cover a variety of sources, and, in the future, will include sources covered by the FIP rule.

Also, because MCESD does not have sufficient resources to enforce Rule 310 for unpaved roads, unpaved parking lots, and vacant lots, EPA intends to provide two additional inspection resources to MCESD by supplementing the MCESD CAA section 105 grant in October 1998. These additional inspectors will perform inspections for EPA with respect to the three source categories subject to the FIP Rule. These additional resources will be provided to MCESD as long as the FIP is in place.

(4) Replacement of FIP Rule. MCESD is currently trying to obtain additional resources to expand implementation of Rule 310. If MCESD obtains the additional resources and is able to develop an enforcement strategy for the vacant lot, unpaved parking lot and unpaved road sources covered by the FIP rule, this strategy may be submitted to EPA for approval as meeting the

[35] MCESD is currently preparing a revision to Rule 310 which would require dust control plans for weed abatement operations that disturb soil surfaces of 0.1 acres or greater.

CAA's RACM requirement for these sources. As part of any implementation strategy that MCESD submits for EPA approval, the County will need to provide evidence that it has adequate resources of its own to ensure that Rule 310 is fully enforced for all fugitive dust sources. If approved, such a strategy will allow EPA to rescind its FIP rule.

B. Impracticability Demonstration.

The Clean Air Act requires moderate PM–10 nonattainment areas to demonstrate attainment of the PM–10 annual and 24-hour standards, or to show that attainment by December 31, 2001 is impracticable (see section IV.B. of this notice). For this proposed FIP, EPA is making the latter demonstration. Based on modeling work performed by the State, existing State controls together with the RACM being proposed by EPA are not sufficient for attainment of either the 24-hour or the annual PM–10 standard by December 31, 2001.

1. Annual Standard

For the annual standard attainment analysis, EPA relied on the State's simulation of the 1995 year found in the MAG Modeling TSD which was performed as part of ongoing work for Maricopa's PM–10 serious area plan. This work used a variant of the Urban Airshed Model (UAM), which is the EPA-recommended model for attainment demonstrations for ozone and carbon monoxide, though it can be used to model any pollutant. The UAM results were scaled using factors derived from observed PM–10 concentrations and from emissions projected to 2001. Because the Greenwood monitoring site had the highest simulated annual concentrations, EPA has used this site as the basis for the annual standard impracticability demonstration.

As can be seen in Table 5, even assuming 100 percent control for sources subject to the proposed FIP rule (an unrealistic level of control, actual control levels will be less [36]), simulated concentrations are still over the annual standard of 50 μg/m^3. Thus, EPA proposes to find that attainment of the annual PM–10 standard is impracticable with the implementation of RACM.

TABLE 5.—ANNUAL STANDARD IMPRACTICABILITY DEMONSTRATION

Source category	Concentration after SIP controls μg/m^3	Maximum possible control (percent)	Concentration after FIP controls μg/m^3
Paved road dust	20.0	.....	20.0
Unpaved road dust	2.9	100	0.0
Gasoline and Diesel vehicle exhaust	1.2	.....	1.2
Agricultural dust	0.2	100	0.0
Other area sources	1.4	.....	1.4
Residential wood combustion	0.4	.....	0.4
Construction/earth moving	5.4	.....	5.4
Construction equipment, locomotives, other non-road engines	1.4	.....	1.4
Major point sources	0.2	.....	0.2
Windblown dust	0.4	100	0.0
Anthropogenic Total	33.5	.....	30.0
Background	22	.....	22
Total	55.5	.....	52.0

2. 24-hour Standard

For its 24-hour standard attainment analysis, EPA relied on the modeling in Arizona's microscale plan. This modeling used the ISCST (Industrial Source Complex, Short Term) model, an EPA guideline model often used for stationary source permit applications, and well-suited to the locally-driven exceedances that were the focus of the microscale plan. ISCST was used to simulate PM–10 concentrations at representative sites subject to emissions from various source types and at which 24-hour exceedances had been observed. These monitoring sites were: 1) Salt River, in an industrial area; 2) Gilbert, affected by agricultural and unpaved parking lot fugitive dust emissions; 3) Maryvale, with disturbed cleared areas nearby due to construction of a park; and 4) West Chandler, near a highway construction project. These sites were selected to represent a variety of conditions within the Maricopa nonattainment area.

The microscale plan demonstrated attainment at the Salt River and Maryvale sites, and EPA approved the attainment demonstrations at these sites at the time it took final action on the microscale plan. 62 FR 41856. The microscale plan did not demonstrate attainment at the West Chandler and Gilbert sites. These sites will be addressed here.

The proposed FIP rule requires RACM for unpaved roads, vacant lots, and unpaved parking lots. These sources in total contribute 25 percent of the emissions to the exceedance at the Gilbert site and just 1 percent of the emissions to the exceedance at the West Chandler site. (For both sites, fugitive dust from agricultural sources is the largest contributor to the exceedances.) The proposed FIP rule has a substantial impact for the Gilbert site, reducing ambient concentrations from 213 to 176 μg/m^3 but much less effect at West Chandler, reducing concentrations from 332 to just 316 μg/m^3. See Table 6. Because the proposed RACM do not result in attainment at either site, EPA is proposing to find that attainment of the 24-hour standard is impracticable with the implementation of RACM.

As can be seen from Table 6, attainment at both sites will require substantial reductions from agricultural sources in addition to reductions from unpaved roads, unpaved parking lots, and vacant lots. While reductions from agricultural sources are expected through the implementation of BMPs by 2001, EPA is unable to quantify the impact of these BMPs at this time because they have not been defined sufficiently to determine the expected level of control. Once the BMPs have been defined, EPA will better be able to estimate reductions from agricultural sources and will revisit any final impracticability demonstration for the 24-hour standard and modify the demonstrations as necessary.

[36] Estimated regional emission reductions from the proposed FIP rule are discussed in Section V.C.1.

TABLE 6.—IMPRACTICABILITY DEMONSTRATION FOR THE 24-HOUR PM–10 STANDARD

Source category	Concentration after SIP controls μg/m3		FIP control (percent)	Concentration after FIP controls μg/m3	
	Chandler	Gilbert		Chandler	Gilbert
Agricultural fields	194.7	——	——	194.7	——
Agricultural aprons	21.7	55.6	——	21.7	55.6
Road construction	6.9	——	——	6.9	——
Unpaved roads	0.5	0.5	64	0.2	0.2
Paved Roads	0.2	1.6	——	0.2	1.6
Unpaved parking lots	.....	51.3	56	.....	22.6
Vacant lots	28.1	14.5	56	12.4	6.4
Anthropogenic Total	252.1	123.4	.....	236.1	86.3
Background	80	90	.....	80	90
Total	332.1	213.4	.....	316.1	176.3

See section V.C. immediately below for a discussion of the estimated emission reductions from the FIP control measures.

C. Reasonable Further Progress (RFP) Demonstration

As discussed previously in Section IV.C. of this preamble, EPA interprets the RFP requirement for areas demonstrating impracticability as being met by a showing that all RACM will be implemented and that the implementation of all RACM has resulted in incremental emission reductions below pre-implementation levels. For the purposes of this proposed RFP demonstration, pre-implementation levels are 1998 emission levels, the promulgation year for this FIP. Because CAA section 171(1) defines RFP reductions as being ''for the purpose of ensuring attainment* * *by the applicable attainment date,'' post-implementation levels are 2001 emission levels, the statutory attainment year.[37]

RFP is demonstrated separately for the annual and 24-hour standards because the mix of sources contributing to the annual standard exceedances differs from that contributing to the 24-hour exceedances. In addition, since PM–10 exceedances are related almost entirely to primarily-emitted PM–10, only emissions of primarily-emitted PM–10 are evaluated for RFP.

1. Annual Standard

The proposed RFP demonstration for the annual standard is summarized here and in Table 7. A complete discussion of the RFP demonstration can be found in the TSD for this proposed action.

Emission levels for 1998 and 2001 were calculated by growing emissions from the emission inventory base year of 1994 and the modeling year of 1995 based on growth factors contained in the MAG Modeling TSD and by incorporating reductions from approved State RACM and BACM controls. Emissions levels for 2001 also reflect the estimated emission reductions from the proposed FIP rule for unpaved roads. The estimated effectiveness of controls on unpaved roads, 80 percent, was based on the research done for the microscale plan on the effectiveness of controls for unpaved parking (see Table 4–1 in the final Microscale Plan) and assumes a rule effectiveness of 80 percent per EPA's guidance and that 90 percent of the VMT on unpaved roads will be impacted by the FIP rule. 57 FR 13503.

The proposed annual RFP demonstration does not include emission reductions from the implementation of the proposed FIP rule for unpaved parking lots and vacant lots. Although emission reductions are expected from these sources, there currently is insufficient information on the number of unpaved parking lots and vacant lots that will be subject to the FIP to calculate an annual emission reduction. Information from the surveys EPA will perform after promulgation of the rule will help in quantifying emission reductions from these sources. In addition, while reductions from agricultural sources are also expected by 2001, no emission reductions were assumed in the proposed RFP demonstration for agricultural sources because the ultimate RACM have not been defined sufficiently to determine the expected level of control.

As described in section V.A.7.b., the FIP rule as proposed requires phased implementation with final implementation no later than June, 2000: existing vacant lots and unpaved parking lots are required to comply within 8 months of the effective date of the final rule (approximately April 1999) and unpaved roads are required to comply by June, 2000. Therefore, full implementation of the measure by 2001 can be assumed. A more detailed discussion of the proposed annual standard RFP demonstration can be found in the TSD for this action.

As can be seen from Table 7, the emission reductions from the proposed FIP measure for unpaved roads is sufficient to assure an incremental emission reduction between 1998 and 2001 and additional reductions expected from unpaved parking lots, vacant lots, and agricultural sources will also contribute to this incremental emission reduction; therefore, EPA proposes to determine that the FIP assures RFP for the annual standard.

TABLE 7.—RFP DEMONSTRATION FOR THE ANNUAL STANDARD

Year	Total PM–10 emissions metric tons/year
1998	61,024
2001	54,256

2. 24-hour Standard

For the 24-hour standard, EPA evaluated RFP only for the Gilbert and West Chandler sites, having already approved the RFP demonstrations at the Maryvale and Salt River sites as part of its action on the microscale plan. 62 FR 41856. For these proposed RFP demonstrations, source activity at each monitor was assumed to be unchanged

[37] The 1998 emission levels also include the implementation of improved controls on construction sources that were approved as BACM in the microscale plan and were to be implemented by mid-1997. No increase in control effectiveness after 1998 is expected from these State BACM measures or from other approved State RACM measures; therefore, the RFP demonstration proposed here only addresses the incremental reductions resulting from the proposed FIP measures.

from the 1995 levels determined in the microscale plan.[38]

As with the annual standard demonstration, 1998 emission levels were adjusted to reflect implementation of the improved controls on construction sources and 2001 emissions levels to reflect the estimated emission reductions from the proposed FIP rule for unpaved roads, unpaved parking lots, and vacant lots. Emission reductions estimates are again based on the research done for the microscale plan and assume a rule effectiveness of 80 percent per EPA's guidance. For unpaved roads, a control effectiveness of 80 percent is assumed. For vacant lots and unpaved parking lots, a control effectiveness of 70 percent is assumed. As with the annual standard, no emission reductions were assumed for agricultural sources. A more detailed analysis of the proposed RFP demonstrations for the Gilbert and West Chandler monitors can be found in the TSD for this proposal.

a. Gilbert Monitoring Site. The 24-hour exceedances at the Gilbert monitor are impacted by emissions from agricultural aprons, disturbed cleared lands (i.e., vacant lots), unpaved parking lots, and paved roads. 62 FR 31031. As can be seen from Table 8, the emission reductions from the proposed FIP rule for unpaved parking lots and vacant lots are sufficient to assure incremental emission reductions between 1998 and 2001 at the Gilbert monitoring sites; therefore, EPA proposes to determine that the proposed FIP assures RFP for the 24-hour standard at the Gilbert monitor.

TABLE 8.—RFP DEMONSTRATION FOR THE 24-HOUR STANDARD—GILBERT MONITORING SITE

Source categories	1998 Emissions (kg/day)	FIP Control (percent)	2001 Emissions (kg/day)
Agriculture aprons	165	0	165
Vacant lots	76	0.56	33
Unpaved parking lots	190	0.56	84
Paved roads	5	0	5
Total	436	.....	287

b. West Chandler Monitoring Site. The 24-hour exceedances at the West Chandler monitor are impacted by emissions from agricultural fields, agricultural aprons, road construction, disturbed cleared lands (i.e., vacant lots), unpaved roads, and paved roads. 62 FR 31031. As can be seen from Table 9, the emission reductions from the proposed FIP rule for unpaved roads and vacant lots are sufficient to assure incremental emission reductions between 1998 and 2001 at the West Chandler monitoring sites; therefore, EPA proposes to determine that the FIP assures RFP for the 24-hour standard at the West Chandler monitor.

TABLE 9.—RFP DEMONSTRATION FOR THE 24-HOUR STANDARD—WEST CHANDLER MONITORING SITE

Source category	1998 Emissions (kg/day)	FIP control (percent)	2001 Emissions (kg/day)
Agriculture	19378	0	19378
Vacant lots	6188	0.56	2723
Road Construction	440	0	440
Agricultural apron	1954	0	1954
Unpaved road	49	0.64	18
Paved roads	37	0	37
Total	28046	.....	24550

VI. Impact on Indian Reservations

The Phoenix PM–10 nonattainment area includes two Indian reservations (the Salt River Pima-Maricopa Indian Community and the Fort McDowell Mojave-Apache Indian Community) and a portion of a third (the Gila River Indian Community). As discussed in section II.A.4. above, EPA's obligation is to apply the measures in the proposed FIP to those sources that would have been regulated under the moderate area PM–10 SIP. That does not include those sources located within Indian country that are not subject to State jurisdiction, and the State of Arizona has not demonstrated to EPA it has any such jurisdiction with respect to these lands.

In addition, EPA believes it would be inappropriate to apply federal control measures to Indian country sources without data showing that these sources are contributing to the area's nonattainment problem. No such data has been submitted to EPA. Therefore, EPA proposes to exclude sources located in Indian country from the proposed FIP requirements.

However, EPA believes that the solution to the Phoenix PM–10 problem must be developed in an equitable manner, and recognizes that such a solution may require that emission controls be applied to certain on-reservation PM–10 sources. In order to assess whether controls should be applied in Indian country, it will be necessary to obtain enough data to identify on-reservation sources and assess their contribution to the air quality problem. EPA is committed to working closely with the Indian tribes to identify impacts of activities on the reservations on the nonattainment area, and to ensure, if necessary, that on-reservation emissions are controlled in

[38] The microscale analysis at each monitor evaluated sources in a very limited geographic area. Because of this limited area, there is little opportunity for sources to expand. In some cases, a source that was present at the microscale site in 1995 no longer exists (e.g., the freeway construction at the West Chandler site); however, for this demonstration, EPA has assumed that the source is still present since the sites were chosen to be representative of other sites in the nonattainment area.

a manner consistent with attainment of the NAAQS.

The three Phoenix-area tribal governments have indicated their willingness to take appropriate steps to protect and improve air quality in the Phoenix area. All three tribes have been building environmental regulatory programs for several years, and all three have expressed their intention to add an air quality component to these programs. The Gila River Indian Community and the Salt River Pima-Maricopa Indian Community are actively developing CAA programs with grant support from EPA Region IX. The Fort McDowell Indian Community is working with EPA Region IX to develop an air grant project that will result in the development of an air quality needs assessment for the Tribe. For all three tribes, an early step in the program development process will be to generate detailed emissions inventory data and assess the need for regulations to control emissions from on-reservation sources.

It took many years for states to develop the comprehensive air quality programs that exist now; likewise, air quality program development can be expected to take many years for tribes. EPA is committed to working closely with the three Phoenix-area tribes over the next several years to enhance and support their air program development. EPA will provide the necessary technical and financial support to ensure not only that an adequate level of data is generated in order to assess appropriate air pollution controls for the reservations, but also to ensure that the tribes develop the capacity, if they so desire, to implement such controls through tribal CAA programs. As a backstop, and consistent with 40 CFR section 49.11(a), EPA is prepared to develop federal measures to implement PM–10 controls necessary to attain the NAAQS in the absence of an approved tribal CAA program.

Furthermore, EPA recognizes that there is a potential equity issue regarding nonattainment area agricultural activities as addressed by this proposal, specifically that many of the farms on the Indian reservations are leased to commercial farmers who are also actively farming off-reservation. In order to address this issue, EPA will actively support tribal participation in the process of developing the agricultural BMPs described in section V.A.7.a. above, and will promote the equitable implementation of BMPs throughout the Phoenix nonattainment area.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. sections 603, 604 and 605(b). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the two proposed federal measures, the fugitive dust rule and the commitment for the development and implementation of RACM for the agricultural sector, EPA is assuming that the affected or potentially affected sources constitute ''small entities'' as defined by the RFA.

The proposed federal measures are intended to fill gaps in the Arizona PM–10 SIP for the Phoenix nonattainment area. For non-agricultural fugitive dust sources, while the County has adopted and EPA has approved Rule 310 into the SIP, the County has not made a commitment to provide adequate resources to ensure enforcement of the rule as it applies to the unpaved road, unpaved parking lot and vacant lot source categories.[39] Further, application of Rule 310 to agricultural sources including fields and aprons is affected by the provision in section 102 (incorporating A.R.S. 49–504.4) that states that the rule ''shall not be construed so as to prevent normal farm cultural practices.'' Therefore, applicability of the rule to such sources depends on what dust-generating operation is occurring at the source. In other words, Rule 310 applies to some operations on agricultural fields and aprons and not to others.

2. RFA Analysis

a. Proposed Federal Rule for Unpaved Roads, Unpaved Parking Lots, and Vacant Lots. The starting point for EPA's analysis is Maricopa County's Rule 310. Regardless of the County's resources for enforcing the rule with respect to nonagricultural fugitive dust sources, those sources are legally responsible for complying with it. Failure to do so subjects such sources to potential enforcement action by EPA, the State, County and/or citizens. Thus, for the purpose of analyzing whether the proposed FIP rule will have ''a significant economic impact,'' EPA assumes that sources subject to the rule are complying with it. The appropriate inquiry then is whether the terms of EPA's proposed rule would impose a significant economic impact beyond that imposed by the terms of Rule 310.

Section 101 of Rule 310 states that the purpose of the rule is ''[t]o limit the emission of particulate matter into the ambient air from any property, operation or activity that may serve as an open fugitive dust source.'' Further, the provisions of the rule ''apply to any activity, equipment, operation and/or man-made or man-caused condition or practice * * * capable of generating fugitive dust. * * *'' Sections 305, 306, 309 and 312 of the rule contain the regulatory requirements applicable to the following source categories: vehicle use in open areas and vacant parcels, unpaved parking areas, vacant areas, and roadways. These requirements differ to some extent depending on the source category, but generally they mandate the implementation of RACM before certain dust-producing activities

[39] The County typically only ensures compliance with Rule 310 for these sources on a complaint basis.

can be undertaken. RACM is defined in section 221 as ''[a] technique, practice, or procedure used to prevent or minimize the generation, emission, entrainment, suspension and/or airbourne transport of fugitive dust.'' As further defined in subsection 221.1, and as pertinent to this analysis, RACM include, but are not limited to: curbing, paving, applying dust suppressants, and/or physically stabilizing with vegetation and gravel.

While subsection 211.1 does not specify which of the listed measures are appropriate for what types of source categories, the general definition of RACM in section 221 together with the list of RACM measures in subsection 211.1 provide a basis for selecting measures which are appropriate for a particular source to prevent or minimize dust emissions, to the extent other provisions of Rule 310 do not specify a particular RACM measure.

EPA's proposed fugitive dust rule is intended to establish a RACM requirement for unpaved parking lots, unpaved roads and vacant lots that is substantively equivalent to that established for the same sources by the Maricopa County rule. As noted above, the requirements of the County rule differ to some extent depending on the source category; EPA's proposed rule mirrors those differences. The primary difference between the County rule and EPA's proposed rule is that the EPA rule provides greater specificity and detail regarding which RACM are appropriate for a particular source category for the purpose of preventing or minimizing fugitive dust emissions.[40]

In providing further specificity and detail, EPA's proposed rule does not change the nature of the RACM requirement already applicable to sources covered by County Rule 310. The RACM required to be applied in the proposed FIP rule are the very measures listed in subsection 211.1 of Rule 310. Beyond that, the RACM specified in the proposed rule for any particular source category are the appropriate RACM for that source category. What constitutes RACM for the source categories covered by the proposed FIP rule is relatively straightforward in light of the differences among the source categories, the low technology nature of the potential RACM and other available information. EPA therefore believes that its further specification of the RACM requirements does not change the nature of the RACM requirements already applicable under County Rule 310.

The only other notable difference between the County rule and the proposed FIP rule that is relevant to this analysis is section 600 of the proposed FIP rule. Rule 310 contains a recordkeeping requirement for permitted dust-generating activities, but does not contain such a requirement for unpermitted activities, including unpaved parking lots, unpaved roads and vacant lots. Therefore, section 600 of the proposed FIP rule includes a requirement that owners/operators subject to the rule maintain records demonstrating appropriate application of RACM. EPA has determined that the recordkeeping requirements for the source categories covered in the FIP rule will not have a significant economic impact. In many cases, the owner/operator need only retain a purchase receipt or contractor work order for the control(s) implemented. When chemical stabilization is applied as a control measure, more specific information regarding the product being used is required. However, this information (e.g., type of product, label instructions) is readily available from vendors or easily determined at the time of application. EPA expects that the information the proposed rule would require sources to keep would be retained by source owners or operators in any event in the normal course of business (e.g., for tax and accounting purposes).

As the above discussion of the RACM requirements of the two rules makes clear, even though the proposed FIP rule differs from Rule 310 in that it is more specific and detailed, there should be no additional burden on regulated sources because they are already legally required to apply RACM under the County rule, and the RACM required by the proposed FIP rule is substantively identical to that required under Rule 310. Moreover, EPA believes that the additional recordkeeping requirement in the proposed FIP rule will not have a significant economic impact on the affected sources. As stated above and in section V.A.7.b., the information proposed to be retained is minimal and is therefore not expected to entail any appreciable economic impact.

b. Proposed Federal Commitment for Agriculture. EPA's proposed measure to control fugitive dust from agricultural fields and aprons consists of an enforceable commitment to propose and finalize adoption of RACM for those sources in September 1999 and April 2000, respectively. Prior to this formal rulemaking, EPA intends to convene a stakeholder process to develop the specific RACM that will ultimately be proposed for adoption. As discussed in detail in section V.A.7.a. above, EPA's intends the RACM to take the form of BMPs. During the BMP development process, EPA will investigate a myriad of factors, including the appropriate coverage of potential BMPs, regional climate, soil and crop types, and growing seasons.

Because this aspect of today's action neither proposes specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities, it will not, by itself, have a significant economic impact on a substantial number of small entities. When EPA proposes specific RACM in the September 1999 rulemaking, it will either undertake a RFA analysis or certify the proposed rule, as appropriate.

c. Certification. For the reasons set forth above, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed federal rules do not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any one year. A ''Federal mandate'' is defined, under section 101 of UMRA, as a provision that ''would impose an enforceable duty'' upon the private

[40] EPA believes that it is reasonable and appropriate for its proposed rule to be more specific and detailed than the County rule. As a result of the State's failure to commit sufficient enforcement resources for its rule, EPA is having to fulfill the role of primary enforcer of the RACM requirement for the sources described above. EPA Region 9 will be responsible for fulfilling that role, and it is located in San Francisco. Given the greater difficulties that Region 9 will inevitably face in enforcing the RACM requirement in Arizona, it is reasonable for EPA to design a RACM rule that ensures EPA enforcement of the rule will be practicable. As described above, the County rule provides a general basis for determining which RACM should be applied to which source categories. But its lack of specificity makes it more likely that the agency enforcing the rule will routinely be called upon to address which RACM should be applied to which source categories. By addressing this issue in the FIP rule itself, EPA hopes to reduce the extent to which sources and others may have to consult with the Agency to determine which RACM are appropriate for a particular source or source category.

sector or State, local, or tribal governments'', with certain exceptions not here relevant.

Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments''.

Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates.

Under section 205 of UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA section] 202'', EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

As explained above, while the proposed federal fugitive dust rule may impose an enforceable duty on State or local governments, the resulting expenditures by those entities are expected to be minimal. Tribal governments are excluded from the coverage of this proposed rule. In addition, there will be no current enforceable duties imposed on, or expenditures by, State, local or tribal governments or the private sector as a result of the proposed federal commitment regarding the agricultural sector. Therefore, expenditures by State, local and tribal governments, in the aggregate, or by the private sector, will be well under $100 million per year as a result of today's proposed federal measures. Consequently, sections 202, 204 and 205 of UMRA do not apply to today's proposed action. Therefore, EPA is not required and has not taken any actions to meet the requirements of these sections of UMRA.

With respect to section 203 of UMRA, EPA has concluded that its proposed actions include no regulatory requirements that will significantly or uniquely affect small governments. As discussed in detail in section VII.B. above, EPA believes that the RACM requirements of the proposed FIP rule for vacant lots, unpaved parking lots and unpaved roads are already legally required under Maricopa County Rule 310. Moreover, the requirements of EPA's proposed FIP rule, while more specific and detailed, are substantively identical to those required under Rule 310. Therefore, there should be no additional burden on regulated sources, including small governments. With respect to EPA's proposed enforceable commitment for the agricultural sector, such a commitment neither proposes specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities. Thus, neither EPA's proposed fugitive dust rule nor its proposed commitment for the agricultural sector will significantly or uniquely affect small governments. Consequently, EPA has not developed a small government plan. Nevertheless, during the development of today's proposed action, EPA held numerous meetings with potentially affected representatives of the State and local governments to discuss the requirements of, and receive input regarding, the proposed federal fugitive dust rule and commitment for the agricultural sector.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1855.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

EPA's proposed FIP rule for unpaved parking lots, unpaved roads and vacant lots includes recordkeeping and reporting requirements which will help ensure source compliance with the rule's control requirements. In general, EPA believes the recordkeeping and reporting requirements are the minimal requirements necessary to demonstrate compliance. The requirents include:

—Owners/operators of unpaved roads must keep a record which indicates the date and type of control (i.e., paving, stabilizing, or applying gravel) applied to the road.

—Owners/operators of unpaved parking lots must keep a record which indicates the date and type of control (i.e., paving, stabilizing, applying gravel, or temporary stabilization for lots used less than 35 days per year) applied to the unpaved parking lot.

—Responsible party(ies) for unpermitted weed abatement activities on vacant lots must develop a dust control plan and submit the plan to EPA for approval prior to the weed abatement.

—Owners/operators of vacant lots with disturbed surfaces must keep a record which indicates the date and type of control (i.e., applying ground cover vegetation, stabilizing, restoring to natural undisturbed state, or applying gravel) applied to the vacant lot.

—Owners/operators of vacant lots with motor vehicle disturbances must keep a record which indicates the date and type of control (i.e., installing signs, fences, dust suppressants, or cement barriers) applied to the vacant lot.

—Agency surveys will be conducted by the EPA or other appropriate agency to determine the effectiveness of the rule in the Phoenix area.

The estimated recordkeeping and reporting burden for the proposed FIP rule is about 9716 hours. The estimated labor cost is about $173,632. No capital/start-up costs or operational and maintenance costs are anticipated. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W. Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 1, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by May 1, 1998. The final rule will respond to any OMB or public

comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Subpart D is proposed to be amended by adding §§ 52.127 and 52.128 to read as follows:

§ 52.127 Commitment to promulgate and implement reasonably available control measures for the agricultural fields and aprons.

The Administrator shall promulgate and implement reasonably available control measures (RACM) pursuant to section 189(a)(1)(C) of the Clean Air Act for agricultural fields and aprons in the Maricopa County (Phoenix) PM–10 nonattainment area according to the following schedule: by no later than September, 1999, the Administrator shall sign a Notice of Proposed Rulemaking; by no later than April, 2000, the Administrator shall sign a Notice of Final Rulemaking; and by no later than June, 2000, EPA shall begin implementing the final RACM.

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

(a) *General.*—(1) *Purpose.* The purpose of this section is to limit the emissions of particulate matter into the ambient air from human activity on unpaved parking lots, unpaved roads and vacant lots.

(2) *Applicability.* The provisions of this section shall apply to owners/operators of unpaved roads, unpaved parking lots and vacant lots and responsible parties for weed abatement on vacant lots in the Phoenix PM–10 nonattainment area. This section does not apply to unpaved roads, unpaved parking lots, or vacant lots located on an industrial facility, construction, or earth-moving site that has an approved permit issued by Maricopa County Environmental Services Division under Rule 200, Section 305 containing a Dust Control Plan (DCP) approved under Rule 310 covering all unpaved parking lots, unpaved roads and vacant lots. Nothing in this definition shall preclude applicability of this section to vacant lots with disturbed surface areas due to construction, earth-moving, weed abatement or other dust generating operations which have been terminated for over eight months.

(b) *Definitions.*—(1) *Average Daily Trips (ADT).* The average number of vehicles that cross a given surface during a specified 24-hour time period as determined by the Institute of Transportation Engineers Trip Generation Report (6th edition, 1997) or tube counts.

(2) *Chemical Stabilizer.* Any non-toxic chemical dust suppressant which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by the U.S. Environmental Protection Agency or any applicable law, rule or regulation.

(3) *Disturbed Surface Area.* Any portion of the earth's surface, or materials placed thereon, which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust.

(4) *Dust Suppressants.* Water, hygroscopic materials, solution of water and chemical surfactant, foam, or non-toxic chemical stabilizers not prohibited for use by the U.S. Environmental Protection Agency or any applicable law, rule or regulation, as a treatment material to reduce fugitive dust emissions.

(5) *EPA.* United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

(6) *Fugitive Dust.* The particulate matter entrained in the ambient air which is caused from man-made and natural activities such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. This excludes particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from piledrivers.

(7) *Lot.* A parcel of land identified on a final or parcel map recorded in the office of the Maricopa County recorder with a separate and distinct number or letter.

(8) *Motor Vehicle.* A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as, but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.

(9) *Off-Road Motor Vehicle.* Any wheeled vehicle which is used off paved roadways and includes but is not limited to the following: any motor cycle or motor-driven cycle; any motor vehicle commonly referred to as a sand buggy, dune buggy, or all terrain vehicle.

(10) *Owner/Operator.* Any person who owns, leases, operates, controls or supervises a fugitive dust source subject to the requirements of this section.

(11) *Paving.* Applying asphalt, recycled asphalt, concrete, or asphaltic concrete to a roadway surface.

(12) *Phoenix PM–10 Nonattainment Area.* Such area as defined in 40 CFR 81.303.

(13) *PM–10.* Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by reference or equivalent methods that meet the requirements specified for PM–10 in 40 CFR part 50, appendix J.

(14) *Reasonably Available Control Measures (RACM).* Techniques used to prevent the emission and/or airborne transport of fugitive dust and dirt.

(15) *Stabilized Surface.* (i) Any unpaved road or unpaved parking lot surface in which any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined by test methods in paragraph (g)(1) of this section.

(ii) Any vacant lot surface that has a visible crust as determined by the test method in paragraph (g)(2)(i) of this section;

(iii) Any vacant lot surface that is sufficiently vegetated as determined by test methods in paragraph (g)(2)(ii) or (g)(2)(iv) of this section.

(iv) Any vacant lot surface which is stabilized as determined by the test method in paragraph (g)(2)(iii) of this section;

(16) *Unpaved Parking Lot.* A privately or publicly owned or operated area utilized for parking vehicles that is not covered by concrete, asphaltic concrete, asphalt, or recycled asphalt.

(17) *Unpaved Road.* Any road, equipment path, or driveway that is not covered by asphalt, asphaltic concrete, recycled asphalt, or concrete. Public unpaved roads are those open to public access that are owned by any federal, state, county, municipal or other

governmental or quasi-governmental agencies.

(18) *Urban or Suburban Open Area.* An unsubdivided or undeveloped tract of land adjoining a residential, industrial, or commercial area, located on public or private property.

(19) *Vacant Lot.* A subdivided residential, industrial, institutional, governmental, or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature.

(c) *Exemptions.* The requirements in paragraph (d) of this section do not apply to the following:

(1) Any unpaved parking lot 5,000 square feet or less.

(2) Any vacant lot with less than 0.10 acres (4,356 square feet) of disturbed surface area(s).

(3) Non-routine or emergency maintenance of flood control channels and water retention basins.

(4) Vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality and/or commercial acceptance. Such facilities and operations shall be exempted from the provisions of this section only if such testing is not feasible within enclosed facilities.

(5) Weed abatement operations performed on any vacant lot or property under the order of a governing agency for the control of a potential fire hazard or otherwise unhealthy condition provided that mowing, cutting, or other similar process is used to maintain weed stubble at least three (3) inches above the soil surface. This includes the application of herbicides provided that the clean-up of any debris does not disturb the soil surface.

(6) Weed abatement operations that receive an approved Earth Moving permit under Maricopa County Rule 200, Section 305 (adopted 11/15/93).

(d) *Requirements.*—(1) *Unpaved parking lots.* Any owners/operators of an unpaved parking lot shall implement one of the following RACM on the entire surface area of the lot within eight (8) months following [the effective date of the final rule].

(i) An owner or operator of an unpaved parking lot shall:

(A) Pave the lot; or

(B) Apply chemical stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(C) Apply and maintain surface gravel uniformly to a depth of at least 2 inches such that the surface is stabilized.

(ii) Any owners/operators of an unpaved parking lot that is used no more than 35 days per year may substitute the following control measure for those listed in paragraph (d)(1)(i) of this section:

(A) Apply chemical stabilizers within 20 days prior to any day in which over 100 vehicles are parked. Chemical stabilizers must be applied in sufficient concentration and frequency to maintain a stabilized surface throughout any day(s) when over 100 vehicles ingress into the lot.

(2) *Unpaved roads.* Any owners/operators of existing public unpaved roads with ADT volumes of 150 vehicles or greater, where at least 70% of the road is located within the Phoenix PM–10 nonattainment area, shall implement one of the following RACM along the entire surface of the road by June 10, 2000:

(i) Pave the road; or

(ii) Apply chemical stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly to a depth of at least 2 inches such that the surface is stabilized.

(3) *Vacant lots.* The following provisions shall be implemented as applicable:

(i) *Weed abatement.* No person shall remove vegetation from any vacant lot by blading, disking, plowing under or any other means that disturbs 0.10 acres or more of soil surface without first obtaining EPA approval of a DCP pursuant to paragraph (d)(3)(i)(A) of this section to effectively prevent or minimize fugitive dust.

(A) A DCP, containing the information described in paragraph (e)(3) of this section, shall be submitted to EPA at least 60 calendar days before the weed abatement occurs. Within 30 calendar days of its receipt, EPA shall provide written notice to the responsible party(ies) approving or disapproving the DCP. Should a DCP be disapproved, within 14 calendar days following receipt of any revisions provided by the responsible party(ies) to EPA, EPA shall provide notice to the responsible party(ies) approving or disapproving the DCP. Should EPA not provide written notice of approval or disapproval within the above deadlines, the responsible party(ies) may assume that the DCP is approved.

(B) Any person responsible for more than one weed abatement operation at non-contiguous sites may submit one DCP covering multiple sites provided that the contents of the DCP apply similarly to all such sites and any information specific to the site that is required by paragraph (e)(3) of this section is included.

(ii) *Disturbed surfaces.* Any owners/operators of an urban or suburban open area vacant lot which remains unoccupied, unused, vacant or undeveloped for more than fifteen (15) days of which any portion has a disturbed surface area(s) shall implement one of the following RACM within eight (8) months following [the effective date of the final rule] or within eight (8) months following the initial fifteen-day period of inactivity, whichever is later:

(A) Establish ground cover vegetation on all disturbed surface areas in sufficient quantity to maintain a stabilized surface; or

(B) Apply dust suppressants to all disturbed surface areas in sufficient quantity and frequency to maintain a stabilized surface; or

(C) Restore to a natural state, i.e. as existing in or produced by nature without cultivation or artificial influence, such that all disturbed surface areas are stabilized; or

(D) Apply and maintain surface gravel uniformly over all disturbed surface areas to a depth of at least 2 inches such that all disturbed surface areas are stabilized.

(iii) *Motor Vehicle Disturbances.* Any owners/operators of an urban or suburban open area vacant lot of which any portion has a disturbed surface area due to motor vehicle or off-road motor vehicle use or parking, notwithstanding use or parking by the owner(s), one of the following RACM shall be implemented within 60 calendar days following the initial determination of disturbance:

(A) Place signs at intervals of at least 300 feet, as measured along the access perimeter, that state ''Dust Control Area: No Trespassing'' with lettering at least two inches in height; or

(B) Place fencing along the access perimeter; or

(C) Plant shrubs or trees at least two (2) feet in height that prohibit motor vehicle and off-road motor vehicle entry along the access perimeter; or

(D) Place cement barriers that prohibit motor vehicle and off-road motor vehicle entry along the access perimeter.

(4) *Alternative control measures.* For sources subject to requirements in paragraphs (d)(1), (d)(2), (d)(3)(ii) and (d)(3)(iii) of this section: As an alternative to compliance, owners/operators may use any other alternative control measures approved by EPA pursuant to paragraphs (e)(1) and (e)(2) of this section as equivalent to the methods specified in paragraph (d) of this section.

(e) *Administrative requirements.* (1) Proposed alternative control measures for sources subject to paragraph (d)(1) of this section must be submitted to EPA

for approval within one year of the effective date of the final rule. Proposed alternative control measures for sources subject to paragraphs (d)(2) and (d)(3)(ii) of this section must be submitted to EPA for approval within 90 days prior to the required RACM implementation date as specified in this section. Proposed alternative control measures for sources subject to paragraph (d)(3)(iii) of this section must be submitted to EPA for approval within 60 calendar days following the initial determination of disturbance.

(2) Upon receipt of an alternative control measure, EPA shall provide written notice within 30 calendar days to the owner/operator approving or disapproving the alternative control measure. Should EPA not provide written notice of approval or disapproval within the above deadline, the owner/operator shall assume that the alternative control measure is approved. Upon receiving notice of EPA approval, the owner/operator shall implement the alternative control measure according to the timeframe established in this section unless otherwise specified by EPA. Upon receiving notice of EPA disapproval of the alternative control measure, the owner/operator shall implement RACM according to the specifications and timeframe established in this section. For sources submitting an alternative control measure under paragraph (d)(3)(iii) of this section, owners/operators shall implement the alternative control measure if approved by EPA within 60 days upon receiving written notice, or, upon disapproval of the alternative control measure, implement RACM as specified in this section within 60 days upon receiving written notice.

(3) Information to be included in a DCP:

(i) Name(s), address(es) and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the DCP and responsible for the weed abatement operation(s).

(ii) A plot plan of the site which describes:

(A) The location of the site;

(B) The total area of land surface subject to disturbance and the total area of the entire project site, in acres;

(C) The type of weed abatement operation(s) and equipment to be used on the site.

(iii) A description of:

(A) Dust control measures or combinations thereof to be applied during all periods of weed abatement operations, including post-weed abatement and any operations conducted afterwork hours and on weekends and holidays, to all surface areas subject to disturbance as described in the plot plan.

(B) Dust control measures to be applied on all days when wind speeds exceed 25 miles per hour.

(C) Dust suppressant(s) to be applied, including product specifications or label instructions for approved usage; the method, frequency and concentration of application; the type, number and capacity of application equipment and; information on environmental impacts and approvals or certifications related to appropriate and safe use for ground applications.

(D) The specific surface treatment(s) and/or control measures utilized to control material track-out and sedimentation onto unpaved surfaces and access points adjoining paved surfaces.

(f) *Monitoring and records* (1) Any owners/operators that are subject to the provisions of this section shall compile and retain records that provide evidence of control measure application, indicating the type of treatment or measure, extent of coverage and date applied. For control measures involving chemical stabilization, records shall also indicate the type of product applied, vendor name, label instructions for approved usage, and the method, frequency and concentration of application.

(2) Copies of control measure records and dust control plans along with supporting documentation shall be retained for at least three years.

(3) *Agency surveys.* (i) EPA or other appropriate entity shall conduct a survey of the number and size (or length) of unpaved roads, unpaved parking lots, and vacant lots subject to the provisions of this section located within the Phoenix PM–10 nonattainment area beginning no later than 365 days following [the effective date of the final rule].

(ii) EPA or other appropriate entity shall conduct a survey at least every three years within the Phoenix PM–10 nonattainment area beginning no later than 365 days following [the effective date of the final rule] which includes:

(A) An estimate of the percentage of unpaved roads, unpaved parking lots, and vacant lots subject to this section to which RACM as required in this section have been applied; and

(B) A description of the most frequently applied RACM and estimates of their control effectiveness.

(g) *Test methods.* (1) For determining whether unpaved roads and unpaved parking lots are stabilized, visible opacity from vehicular movement shall not exceed twenty (20) percent. Opacity observations shall be conducted in accordance with Reference Method 9 (40 CFR part 60, appendix A), [Proposed Methods 203A, 203B, and 203C, with opacity readings conducted according to Method 203C] [1]. Visible opacity tests shall only be conducted on dry unpaved surfaces (i.e. when the surface is not damp to the touch) and on days when average wind speeds do not exceed 15 miles per hour (mph). For purposes of this section, visible opacity tests shall be conducted using the following vehicle speeds: 35 mph on unpaved roads and 20 mph on unpaved parking lots.

(2) The test methods in this paragraph (g)(2) shall be used for determining whether a vacant lot, or portion thereof, has a stabilized surface. Evidence of disturbance is loss of vegetation cover and disintegration of surface compaction and/or crusts. The surface shall be considered stabilized if any of the following test methods indicate that conditions defining a stabilized surface have been met:

(i)(A) Where a visible crust exists which is greater than 0.6 cm thick and not easily crumbled between the fingers, the surface shall be considered stabilized. This determination shall be based on the majority of at least three (3) crustal measurements representative of the disturbed surface area.

(B) If thin deposits of loose uncombined surface material cover more than 50 percent of a crusted surface, the test method described in paragraph (g)(2)(iii) of this section shall be applied to the loose material to determine whether the surface is stabilized.

(ii) Where flat vegetation covers at least 50 percent of the disturbed surface area as determined by the line transect method described in ''Estimating Percent Residue Cover Using the Line-Transect Method'', G93–1133 (February 1997, Electronic version), Cooperative Extension, Institute of Agriculture and Natural Resources, University of Nebraska-Lincoln, the surface shall be considered stabilized. Flat vegetation shall include attached vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation and a vertical height of one (1) inch or less that is not subject to movement by wind. Flat vegetation which is dead but firmly attached shall be considered equally protective as live vegetation. Stones or other aggregate larger than one

[1] These proposed methods in 40 CFR part 51, appendix M, were published at 58 FR 61640, November 22, 1993.

centimeter in diameter may be considered protective cover in the course of conducting the line transect method.

(iii) For all other surface conditions, at least three (3) soil samples shall be collected representative of the disturbed surface area. Each sample shall be measured for threshold friction velocity in accordance with the sieving field procedure found in ''Industrial Wind Erosion'' (Fifth Edition, Volume I, Chapter 13, Section 13.2.5, 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. Corrections for non-erodible elements (not including flat or standing vegetation), shall be determined by following the procedures in ''Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites'', (February 1985, Appendix A) EPA/600/8–85/002, Office of Health and Environmental Assessment, United States Environmental Protection Agency, Washington DC. Non-erodible elements shall be defined as elements on the disturbed surface area which remain firmly in place during a wind episode and inhibit soil loss by consuming part of the shear stress of the wind, such as stones larger than one centimeter in diameter. Soil samples shall only be collected from dry surfaces (i.e. when the surface is not damp to the touch) to a depth of approximately one (1) centimeter. The threshold friction velocity of all soil samples shall be averaged. The surface shall be considered stabilized if the threshold friction velocity, corrected for non-erodible elements, is equal to or greater than 100 centimeters per second.

(iv) Where standing vegetation is firmly attached to the disturbed surface area and the corrected threshold friction velocity measured in paragraph (g)(2)(iii) of this section is equal to or greater than forty-three (43) centimeters per second, the surface shall be considered stabilized if the average frontal silhouette area of the standing vegetation per unit of ground area is ten (10) percent or greater. Where standing vegetation is firmly attached to the disturbed surface area and the corrected threshold friction velocity measured in paragraph (g)(2)(iii) of this section is less than forty-three (43) centimeters per second, the surface shall be considered stabilized if the average frontal silhouette area of the standing vegetation per unit of ground area is thirty (30) percent or greater. Standing vegetation shall include vegetation that is attached via root systems with predominant vertical orientation and a height exceeding one (1) inch. Standing vegetation which is dead but firmly attached shall be considered equally protective as live vegetation.

(A) For standing vegetation that consists of separate vegetative units (for example, shrubs and sagebrush), the standard unit area of ground surface to be surveyed shall be a square of side length equal to at least 10 times the average height of the vegetative structure. For other standing vegetation, the standard unit area to be surveyed shall be three (3) feet by 3 feet.

(B) The number of standing vegetative structures within the standard unit area shall be counted. Vegetation which grows in clumps shall be counted as a single unit. Where vegetation of diverse dimensions is present, vegetation shall be counted separately in groups with similar horizontal and vertical structural dimensions. The width and height of the vegetation that is representative of the average dimensions of the general vegetation within each structural group in the standard unit area shall be measured and multiplied together to obtain a frontal silhouette area. The frontal silhouette areas for each vegetative group shall be multiplied by the total number of vegetation counted within each group and added together to arrive at the total frontal silhouette area of all standing vegetative structures. The total frontal silhouette area shall be divided by the total standard unit area and multiplied by 100 to arrive at the percent frontal silhouette area coverage.

(C) This procedure shall be repeated for at least two additional representative areas within the disturbed portion(s) of the vacant lot. The three percent frontal silhouette areas shall be averaged. Total frontal silhouette areas of distinct standard unit areas may only be added together if the vegetation is relatively uniform and consistent in spacing over the entire disturbed surface area.

(3) Alternative test methods may be used upon obtaining the written approval of the EPA.

[FR Doc. 98–8061 Filed 3–31–98; 8:45 am]

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Part III

General Services Administration

41 CFR Chapters 300 and 301
Federal Travel Regulation, General Guides and Temporary Duty (TDY) Travel Allowances; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 300 and 301

[FTR Amendment 70—1998 Edition]

RIN 3090–AG25

Federal Travel Regulation, General Guides and Temporary Duty (TDY) Travel Allowances

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to add new Chapter 300 which contains general guidance on how to use the FTR and agency reporting requirements, and a revised Chapter 301 regarding temporary duty (TDY) travel allowances except Appendixes A and B. Chapters 300–301 form the beginning of the plain language FTR 1998 Edition. Current chapters 302–304 remain in effect until superseded by a rule in the plain language format to be published at a future date.

EFFECTIVE DATE: This final rule is effective July 1, 1998.

FOR FURTHER INFORMATON CONTACT: *Technical Information:* Jim Harte, telephone (202) 501–1538. *FTR ''plain language'' format:* Internet GSA, *ftrtravel.chat@gsa.gov*.

SUPPLEMENTARY INFORMATION: This amendment is written in the ''plain language'' style of regulation writing as a continuation of the GSA's effort to make the FTR easier to understand and use.

What is the ''plain language'' style of regulation writing?

The ''plain language'' style of regulation writing is a new, simpler to read and understand, question and answer regulatory format. Questions are in the first person, and answers are in the second person. GSA uses a ''we'' question when referring to an agency, and an ''I'' question when referring to the employee. However, the rules stated in either section apply to both the employee and traveler.

How does this amendment change the FTR format?

The FTR is divided into chapters, parts, sections and paragraphs. This amendment adds a new Chapter 300 and restructures parts, sections and paragraphs in Chapter 301.

What are the significant changes?

The significant changes are:

(a) *Adds new Appendix C*—Standard Data Elements for Federal Travel.

(b) *Adds new Appendix D*—Glossary of Acronyms.

(c) *First Class Travel*—

(1) Clarifies when an airline flight has only two classes of service, the highest class designation, regardless of term used, is considered to be first class, and

(2) Allows agencies to consider ''physical characteristic'' and not just medical or disability reasons for authorizing first-class travel.

(d) *Special Needs (also see Employee with a Disability)*—Defines ''special need'' as a physical characteristic not necessarily defined as a disability.

(e) *Use of a privately owned vehicle (POV) instead of a taxi for travel to/from common carrier terminal on a day of travel*—Removes the requirement for a cost comparison not to exceed taxicab fare and tip between points involved when POV is authorized as advantageous to the Government.

(f) *Actual expense authorization/approval criteria*—Allows agency discretion when to authorize/approve actual expense by deleting the phrase ''special or unusual circumstances'' and inserts ''when deemed warranted.''

(g) *Electronic means*—Encourages agencies to use electronic means, as opposed to paper, when and where feasible.

(h) *Travel Management System (TMS)*—Requires the use of a TMS by the year 2001 for arranging air, rail, hotel/motel accommodations and car rental reservations. Also provides common data elements that an agency should collect through the TMS.

(i) *Travel Claim Forms*—Permits each agency to develop, based on its needs, their own paper or electronic travel claim form but requires that common data elements contained in Appendix C, Chapter 301 be used.

(j) *Travel Payment System*—Provides common data elements that agencies should include in a travel payment system.

(k) *Hotel Motel Fire Safety Act of 1990—Federal Emergency Management Agency (FEMA)—Approved Accommodations*—Each agency is responsible for encouraging its employees who require commercial lodging when performing official travel to stay at a fire safe approved accommodation. Lodgings that have met the Government requirements are listed on the U.S. Fire Administration's Internet site. The introduction to Appendix A, Chapter 301, has been amended to include the policy of the Federal Government and U.S. Fire Administration Internet site: *http://www.usfa.fema.gov/hotel/index.htm*.

(l) *Federal Agencies Travel Survey*—Requires agencies to respond to a travel survey that will be distributed by the GSA, Office of Governmentwide Policy, Office of Transportation & Personal Property, Travel and Transportation Management Policy Division bi-annually.

(m) *Complimentary Meals*—Clarifies that the meal and incidental expense (M&IE) rate will not be reduced for a complimentary meal(s) provided by common carriers or hotel/motels.

(n) *Interim Rule 5, Use of Government Aircraft.* Finalizes the rule governing the use of Government aircraft.

(o) *Reimbursement of per diem or actual expenses when leave is taken immediately before or after a non-workday.* Allows agency to make determination whether reimbursement will be allowed for non-workdays.

(p) Clarifies that a traveler may upgrade his or her transportation accommodations to premium-class other than first class solely through the redemption of frequent flyer benefits when authorized by agency policy or when the requirements for first-class or premium other than first class are met.

(q) Removes the specific definitions of the terms ''conference site'' and ''conference facility'' because these are commonly understood terms.

(r) The provisions applying to the ''Fly America Act'', §§ 301–10.131 through 301–10.144, will be issued separately as a proposed rule with request for comment.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–1 through 300–70 and 301–1 through 301–76

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR subtitle F is amended to read as follows:

1. 41 CFR chapter 300 is added to read as follows:

CHAPTER 300—GENERAL

Subchapter A—Introduction

Subchapter B—Agency Requirements

Subchapter A—Introduction

PART 300–1—THE FEDERAL TRAVEL REGULATION (FTR)

Sec.
300–1.1 What is the FTR?
300–1.2 What is the purpose of the FTR?

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

§ 300–1.1 What is the FTR?

The FTR is the regulation contained in 41 Code of Federal Regulations (CFR), Chapters 300 through 304, which implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense.

§ 300–1.2 What is the purpose of the FTR?

There are two principal purposes:

(a) To interpret statutory and other policy requirements in a manner that balances the need to assure that official travel is conducted in a responsible manner with the need to minimize administrative costs;

(b) To communicate the resulting policies in a clear manner to Federal agencies and employees.

PART 300–2—HOW TO USE THE FTR

Subpart A—General

Sec.
300–2.1 What formats exist in the FTR?

Subpart B—Question and Answer Format

Sec.
300–2.20 What is the purpose of the question & answer format?
300–2.21 How is the rule expressed in the question & answer format?
300–2.22 Who is subject to the FTR?
300–2.23 How is the user addressed in the FTR?

Subpart C—Title and Narrative Format

Sec.
300–2.70 How is the rule expressed in the title and narrative format?

PART 300–3—Glossary of Terms

Sec.
300–3.1 What do the following terms mean?

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—General

§ 300–2.1 What formats exist in the FTR?

The FTR is written in two formats—the question & answer format and the title and narrative format.

Subpart B—Question & Answer Format

§ 300–2.20 What is the purpose of the question & answer format?

The Q&A format is an effective way to engage the reader and to break the information into manageable pieces.

§ 300–2.21 How is the rule expressed in the question and answer format?

The rule is expressed in both the question and answer.

§ 300–2.22 Who is subject to the FTR?

Employees and agencies. Since the user may be an employee or an agency, portions of the FTR have been separated into employee and agency sections. However, while the employee provisions are addressed to the employee, the rules expressed in those provisions apply to the agency as well. The following lists the relevant employee and agency sections of the FTR:

For	The employee provisions are contained in	And the agency provisions are contained in
Chapter 301.	Subchapters A, B, and C.	Subchapter D.

§ 300–2.23 How is the user addressed in the FTR?

The FTR asks questions in the first person, as the user would. It then answers the questions in the second and third person. In the employee sections, the employee is addressed in the singular, and in the agency sections, the agency is addressed in the plural. The following describes how employee and agency are addressed in both sections:

When you are in the	And you are looking at a	The employee is referred to using	And the agency is referred to using
Employee section	Question	I, me, or my	Agency.
	Answer	You or your	Agency.
Agency section	Question	Employee	We, us, or our.
	Answer	Employee	You or your.

Subpart C—Title and Narrative Format

§ 300–2.70 How is the rule expressed in the title and narrative format?

The rule is in the narrative. The title serves only as a tool to determine the subject of the rule.

PART 300–3—GLOSSARY OF TERMS

§ 300–3.1 What do the following terms mean?

Actual expense—Payment of authorized actual expenses incurred, up to the limit prescribed by the Administrator of GSA or agency, as appropriate. Entitlement to reimbursement is contingent upon entitlement to per diem, and is subject to the same definitions and rules governing per diem.

Approved accommodation—Any place of public lodging that is listed on the national master list of approved accommodations. The national master list of all approved accommodations is compiled, periodically updated, and published in the **Federal Register** by FEMA. Additionally, the approved accommodation list is available on the U.S. Fire Administration's Internet site at http://www.usfa.fema.gov/hotel/index.htm.

Automated-Teller-Machine (ATM) services—Contractor-provided ATM services that allow cash withdrawals from participating ATMs to be charged to a contractor-issued charge card.

Common carrier—Private-sector supplier of air, rail or bus transportation.

Conference—A meeting, retreat, seminar, symposium or event that involves attendee travel. The term ''conference'' also applies to training activities that are considered to be conferences under 5 CFR 410.404.

Continental United States (CONUS)—The 48 contiguous States and the District of Columbia.

Contract carriers—U.S. certificated air carriers which are under contract with the government to furnish Federal employees and other persons authorized to travel at Government expense with passenger transportation service. This also includes GSA's scheduled airline passenger service between selected U.S. cities/airports and between selected U.S. and international cities/airports at reduced fares.

Employee with a disability—(also see *Special Needs*)

(a) An employee who has a disability as defined in paragraph (b) of this definition and is otherwise generally covered under the Rehabilitation Act of 1973, as amended (29 U.S.C. 701–797b).

(b) ''Disability,'' with respect to an employee, means:

(1) Having a physical or mental impairment that substantially limits one or more major life activities;

(2) Having a record of such an impairment;

(3) Being regarded as having such an impairment; but

(4) Does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(c) ''Physical or mental impairment'' means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organ, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder (e.g., mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities).

(3) The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and orthopedic, visual, speech and hearing impairments.

(d) ''Major life activities'' means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(e) ''Has a record of such an impairment'' means the employee has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(f) ''Is regarded as having such an impairment'' means the employee has:

(1) A physical or mental impairment that does not substantially limit major life activities but the impairment is treated by the agency as constituting such a limitation;

(2) A physical or mental impairment that substantially limits major life activities as a result of the attitudes of others toward such an impairment; or

(3) None of the impairments defined under ''physical or mental impairment'', but is treated by the employing agency as having a substantially limiting impairment.

Family (see Immediate family)

Foreign air carrier—An air carrier who is not holding a certificate issued by the United States under 49 U.S.C. 41102.

Foreign area (see also non-foreign area)—Any area, including the Trust Territory of the Pacific Islands, situated both outside CONUS and the non-foreign areas.

Government aircraft—Any aircraft owned, leased, chartered or rented and operated by an executive agency.

Government contractor-issued individually billed charge card—A Government contractor-issued charge card used by authorized individuals to pay for official travel and transportation related expenses for which the contractor bills the employee.

Government-furnished automobile—An automobile (or ''light truck,'' as defined in 41 CFR 101–38 including vans and pickup trucks) that is:

(a) Owned by an agency,

(b) Assigned or dispatched to an agency from the GSA Interagency Fleet Management System, or

(c) Leased by the Government for a period of 60 days or longer from a commercial source.

Government-furnished vehicle—A Government-furnished automobile or a Government aircraft.

Government Transportation Request (GTR) (Standard Form 1169)—A Government document used to procure common carrier transportation services. The document obligates the Government to pay for transportation services provided.

Immediate family—Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs other authorized travel involving family members:

(a) Spouse;

(b) Children of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term ''children'' shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the employee or employee's spouse; and an unborn child(ren) born and moved after the employee's effective date of transfer.);

(c) Dependent parents (including step and legally adoptive parents) of the employee or employee's spouse; and

(d) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

Interviewee—An individual who is being considered for employment by an agency. The individual may currently be a Government employee.

Invitational travel—Authorized travel of individuals either not employed or employed (under 5 U.S.C. 5703) intermittently in the Government service as consultants or experts and paid on a daily when-actually-employed basis and for individuals serving without pay or at $1 a year when they are acting in a capacity that is directly related to, or in connection with, official activities of the Government. Travel allowances authorized for such persons are the same as those normally authorized for employees in connection with TDY.

Lodgings-plus per diem system—The method of computing per diem allowances for official travel in which the per diem allowance for each travel day is established on the basis of the actual amount the traveler pays for lodging, plus an allowance for meals and incidental expenses (M&IE), the total of which does not exceed the applicable maximum per diem rate for the location concerned.

Non-foreign area—The States of Alaska and Hawaii, the Commonwealths of Puerto Rico, Guam and the Northern Mariana Islands and the territories and possessions of the United States (excludes the Trust Territories of the Pacific Islands).

Official station—The official station of an employee or invitational traveler (see § 301–1.2) is the location of the employee's or invitational traveler's permanent work assignment.

The geographic limits of the official station are:

(a) For an employee:

(1) The corporate limits of the city or town where stationed or if not in an incorporated city or town;

(2) The reservation, station, or other established area (including established subdivisions of large reservations) having definite boundaries where the employee is stationed.

(b) For an invitational traveler:

(1) The corporate limits of the city or town where the home or principal place of business exists or if not in an incorporated city or town;

(2) The reservation, station, or other established area (including established subdivisions of large reservations) having definite boundaries where the

home or principal place of business is located.

Per diem allowance—The per diem allowance (also referred to as subsistence allowance) is a daily payment instead of reimbursement for actual expenses for lodging, meals, and related incidental expenses. The per diem allowance is separate from transportation expenses and other miscellaneous expenses. The per diem allowance covers all charges, including taxes and service charges where applicable for:

(a) *Lodging.* Includes expenses for overnight sleeping facilities, baths, personal use of the room during daytime, telephone access fee, and service charges for fans, air conditioners, heaters and fires furnished in the room when such charges are not included in the room rate. Lodging does not include accommodations on airplanes, trains, buses, or ships. Such cost is included in the transportation cost and is not considered a lodging expense.

(b) *Meals.* Expenses for breakfast, lunch, dinner and related tips and taxes (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).

(c) *Incidental expenses.* (1) Fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries;

(2) Laundry, cleaning and pressing of clothing;

(3) Transportation between places of lodging or business and places where meals are taken, if suitable meals cannot be obtained at the TDY site; and

(4) Mailing cost associated with filing travel vouchers and payment of Government sponsored charge card billings.

Place of public accommodation—Any inn, hotel, or other establishment within a State that provides lodging to transient guests, excluding:

(a) An establishment owned by the Federal Government;

(b) An establishment treated as an apartment building by State or local law or regulation; or

(c) An establishment containing not more than 5 rooms for rent or hire that is also occupied as a residence by the proprietor of that establishment.

Post of duty—An official station outside CONUS.

Privately owned aircraft—An aircraft that is owned or leased by an employee for personal use. It is not owned, leased, chartered, or rented by a Government agency, nor is it rented or leased by an employee for use in carrying out official Government business.

Privately owned automobile—A car or light truck (including vans and pickup trucks) that is owned or leased for personal use by an individual.

Privately Owned Vehicle (POV)—Any vehicle such as an automobile, motorcycle, aircraft, or boat operated by an individual that is not owned or leased by a Government agency, and is not commercially leased or rented by an employee under a Government rental agreement for use in connection with official Government business.

Reduced per diem—Your agency may authorize a reduced per diem rate when there are known reductions in lodging and meal costs or when your subsistence costs can be determined in advance and are lower than the prescribed per diem rate.

Special conveyance—Commercially rented or hired vehicles other than a privately owned vehicle and other than those owned or under contract to an agency.

Special needs (also see Employee with a disability)—Physical characteristics of a traveler not necessarily defined under disability. Such physical characteristics could include, but are not limited to, the weight or height of the traveler.

Subsistence expenses—Expenses such as:

(a) Lodging, including taxes and service charges;

(b) Meals, including taxes and tips; and

(c) Incidental expenses (see incidental expenses under definition of *per diem allowance.*)

Temporary duty (TDY) location—A place, away from an employee's official station, where the employee is authorized to travel.

Travel advance—Prepayment of estimated travel expenses paid to an employee.

Travel authorization (Orders)—Written permission to travel on official business. There are three basic types of travel authorizations (orders):

(a) *Unlimited open.* An authorization allowing an employee to travel for any official purpose without further authorization.

(b) *Limited open.* An authorization allowing an employee to travel on official business without further authorization under certain specific conditions, i.e., travel to specific geographic area(s) for specific purpose(s), subject to trip cost ceilings, or for specific periods of time.

(c) *Trip-by-trip.* An authorization allowing an individual or group of individuals to take one or more specific official business trips, which must include specific purpose, itinerary, and estimated costs.

Travel claim (Voucher)—A written request, supported by documentation and receipts where applicable, for reimbursement of expenses incurred in the performance of official travel, including permanent change of station (PCS) travel.

Travel Management System (TMS)—A system to arrange travel services for Federal employees on official travel, including reservation of accommodations and ticketing. A TMS includes a travel management center, commercial ticket office, electronic travel management system, or other commercial method of arranging travel.

SUBCHAPTER B—AGENCY REQUIREMENTS

PART 300–70—AGENCY REPORTING REQUIREMENTS

Subpart A—Requirement to Report Agency Payments for Employee Travel and Relocation

Sec.

Subpart B—Requirement to Report Use of First-Class Transportation Accommodations

Sec.

Subpart C—[Reserved]

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp.,p. 586.

Subpart A—Requirement to Report Agency Payments for Employee Travel and Relocation

§ 300–70.1 What are the requirements for reporting payments for employee travel and relocation?

Agencies (as defined in § 301–1.1) that spent more than $5 million on travel and transportation payments, including relocation, during the fiscal year immediately preceding the survey year must report this information. Every

two years GSA will distribute the Federal Agencies Travel Survey which is assigned Interagency Control No. 0362-GSA-AN. Copies of the survey may be obtained from the Director, Travel and Transportation Management Policy Division (MTT), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405.

§ 300–70.2 What information must we report?

For the fiscal year reporting period you must report the following information:

(a) Estimated total agency payments for travel and transportation of people;

(b) Average costs and duration of trips;

(c) Amount of official travel by purpose(s);

(d) Estimated total agency payments for employee relocation; and

(e) Any other specific information GSA may require for the reporting period.

§ 300–70.3 How long will we have to respond to the travel survey?

The survey will specify the due date. The head of your agency must appoint a designee at the headquarters level responsible for ensuring that the survey is completed and returned to GSA by the due date. Upon receiving a survey, you must submit the designee's name, address, and telephone number to the Director, Travel and Transportation Management Policy Division (MTT), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405.

§ 300–70.4 How do we respond to the travel survey if we have major suborganizations?

If you have major suborganizations, you must submit responses as follows:

(a) A separate response from each suborganization which spent more than $5 million for travel and relocation during the fiscal year immediately preceding the survey year;

(b) A consolidated response covering all your suborganizations which did not spend more than $5 million for travel and relocation during the fiscal year immediately preceding the survey year; and

(c) A consolidated response which covers all components of your agency.

Subpart B—Requirement to Report use of First-Class Transportation Accommodations

§ 300–70.100 Who must report use of first-class transportation accommodations?

An agency as defined in § 301–1.1 of this subtitle.

§ 300–70.101 What information must we report?

All instances in which you authorized/approved the use of first-class transportation accommodations. This report has been assigned Interagency Report Control No. 0411-GSA-AN.

§ 300–70.102 How often must we report the required information?

Once every year.

§ 300–70.103 When will GSA request this information?

Generally, GSA will notify agencies during the summer months that this information is required and will indicate the date reports are due.

§ 300–70.104 Are there any exceptions to the reporting requirement?

Yes. You are not required to report data that is protected from public disclosure by statute or Executive Order. However, you are required to submit, in your cover letter to GSA, the following aggregate information unless that information is also protected from public disclosure:

(a) Aggregate number of authorized first-class trips that are protected from disclosure;

(b) Total of actual first-class fares paid; and

(c) Total of coach-class fares that would have been paid for the same travel.

Subpart C [Reserved]

2. 41 CFR chapter 301 is amended by removing parts 301–1 and 301–2; removing § § 301–3.1 through 301–3.5 (§ 301–3.6 remains unchanged); removing parts 301–4 through 301–17; and adding new parts 301–1, 301–2, 301–10 through 301–13, 301–30, 301–31, 301–50 through 301–53, and 301–70 through 301–75, to read as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Subchapter A—Introduction

Subchapter B—Allowable Travel Expenses

Subchapter C—Arranging for Travel Services, Paying Travel Expenses, and Claiming Reimbursement

Subchapter D—Agency Responsibilities

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Subchapter A—Introduction

PART 301–1—APPLICABILITY

Authority: 5 U.S.C. 5707.

§ 301–1.1 What is an ''agency'' for purposes of TDY allowances?

An agency includes	But does not include
An Executive agency, as defined in 5 U.S.C. 101	A Government-controlled corporation.
A military department	A Member of Congress.
An office, agency or other establishment in the legislative branch	An office or committee of either House of Congress or of the two Houses.
The Government of the District of Columbia	An office, agency or other establishment in the judicial branch.

§ 301–1.2 What is an ''employee'' for purposes of TDY allowances?

An ''employee'' is:

(a) An individual employed by an agency, regardless of status or rank; or

(b) An individual employed intermittently in Government service as an expert or consultant and paid on a daily when-actually-employed (WAE) basis; or

(c) An individual serving without pay or at $1 a year (also referred to as ''invitational traveler'').

§ 301–1.3 Who is eligible for TDY allowances?

This chapter covers the following individuals:

(a) Employees traveling on official business;

(b) Interviewees performing pre-employment interview travel;

(c) Employees who must interrupt official business travel to perform emergency travel as a result of an incapacitating illness or injury or a personal emergency situation; and

(d) Threatened law enforcement/investigative employees and members of their family temporarily relocated to safeguard their lives because of a threat resulting from the employee's assigned duties.

PART 301–2—GENERAL RULES

Sec.

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353; 49 U.S.C. 40118.

§ 301–2.1 Must I have authorization to travel?

Yes, generally you must have written or electronic authorization prior to incurring any travel expense. If it is not practicable or possible to obtain such authorization prior to travel, your agency may approve a specific authorization for reimbursement of travel expenses after travel is completed. However, written or electronic advance authorization is required for items in § 301–2.5 (c), (i), (n), and (o) of this part.

§ 301–2.2 What travel expenses may my agency pay?

Your agency may pay only those expenses essential to the transaction of official business, which include:

(a) Transportation expenses as provided in part 301–10 of this chapter;

(b) Per diem expenses as provided in part 301–11 of this chapter;

(c) Miscellaneous expenses as provided in part 301–12 of this chapter; and

(d) Travel expenses of an employee with special needs as provided in part 301–13 of this chapter.

§ 301–2.3 What standard of care must I use in incurring travel expenses?

You must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

§ 301–2.4 For what travel expenses am I responsible?

You are responsible for expenses over the reimbursement limits established in this chapter. Your agency will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business.

§ 301–2.5 What travel arrangements require specific authorization or prior approval?

You must have a specific authorization or prior approval for:

(a) Use of premium-class service on common carrier transportation;

(b) Use of a foreign air carrier;

(c) Use of reduced fares for group or charter arrangements;

(d) Use of cash to pay for common carrier transportation;

(e) Use of extra-fare train service;

(f) Travel by ship;

(g) Use of a rental car;

(h) Use of a Government aircraft;

(i) Payment of a reduced per diem rate;

(j) Payment of actual expense;

(k) Travel expenses related to emergency travel;

(l) Transportation expenses related to threatened law enforcement/investigative employees and members of their families;

(m) Travel expenses related to travel to a foreign area;

(n) Acceptance of payment from a non-Federal source for travel expenses, see chapter 304 of this subtitle; and

(o) Travel expenses related to attendance at a conference.

Note to § 301–2.5: Paragraphs (c), (i), (n), and (o) of this section require a written or electronic advance authorization.

SUBCHAPTER B—ALLOWABLE TRAVEL EXPENSES

* * * * *

PART 301–10 TRANSPORTATION EXPENSES

Subpart A—General

Sec.

Subpart B—Common Carrier Transportation

Sec.

Airline

Use of Contract City-Pair Fares

Airline Accommodations

Authority: 5 U.S.C. 5707; 40 U.S.C. 486 (c); 49 U.S.C. 40118.

Subpart A—General

§ 301–10.1 Am I eligible for payment of transportation expenses?

Yes, when performing official travel, including local travel.

§ 301–10.2 What expenses are payable as transportation?

Fares, rental fees, mileage payments, and other expenses related to transportation.

§ 301–10.3 What methods of transportation may my agency authorize me to use?

Your agency may authorize:

(a) Common carrier transportation (e.g., aircraft, train, bus, ship, or local transit system) under Subpart B;

(b) Government vehicle under Subpart C;

(c) POV under Subpart D; or

(d) Special conveyance (e.g., taxi or commercial automobile) under Subpart E.

§ 301–10.4 How does my agency select the method of transportation to be used?

Your agency must select the method most advantageous to the Government, when cost and other factors are considered. Under 5 U.S.C. 5733, travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of your duties. In addition, your agency must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost worktime, and actual transportation costs), total distance traveled, number of points visited, and number of travelers.

§ 301–10.5 What are the presumptions as to the most advantageous method of transportation?

(a) *Common carrier.* Travel by common carrier is presumed to be the most advantageous method of transportation and must be used when reasonably available.

(b) *Government automobile.* When your agency determines that your travel must be performed by automobile, a Government automobile is presumed to be the most advantageous method of transportation.

§ 301–10.6 What is my liability if I do not travel by the selected method of transportation?

If you do not travel by the method of transportation required by regulation or selected by your agency, any additional expenses you incur will be borne by you.

§ 301–10.7 How should I route my travel?

You must travel to your destination by the usually traveled route unless your agency authorizes or approves a different route as officially necessary.

§ 301–10.8 What is my liability if, for personal convenience, I travel by an indirect route or interrupt travel by a direct route?

Your reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis. You will be responsible for any additional costs.

Subpart B—Common Carrier Transportation

§ 301–10.100 What types of common carrier transportation may I be authorized to use?

You may be authorized to use airline, train, ship, bus, or local transit system.

Airline

§ 301–10.106 What are the basic requirements for using airlines?

The requirements for using airlines fall into three categories:

(a) Using contract carriers, when available;

(b) Using coach class service, unless premium class, or first class service is authorized;

(c) Using U.S. flag air carrier or (ship) service, unless use of foreign air carrier or (ship) is authorized.

Use of Contract City-Pair Fares

§ 301–10.107 When must I use a contract city-pair fare?

You must always use a contract city-pair fare, if such fare is available to you unless one or more of the following conditions exist:

(a) Seating space on the scheduled contract flight is not available in time to accomplish the purpose of travel, or use of contract service would require you to incur unnecessary overnight lodging costs which would increase the total cost of the trip; or

(b) The contract's flight schedule is inconsistent with explicit policies of individual Federal departments and agencies or other mandatory users of scheduling employee travel during normal working hours; or

(c) A non-contract carrier offers a lower fare available to the general public, the use of which will result in a lower total trip cost to the Government or other mandatory user. This determination should be based on a cost comparison to include the combined cost of transportation, lodging, meals and related expenses.

Note to paragraph (c). This exception does not apply if a contract carrier offers a comparable fare and has seats available at that fare, or if the lower fare offered by a non-contract carrier is restricted to Government and military travelers on official business and may only be purchased with a GTR, contractor issued charge card or centrally billed account (e.g., YDG, MDG, ODG, VDG, and similar fares).

(d) Rail service is available, and such service is cost effective and is consistent with the mission.

§ 301–10.108 Are there other situations when I may use a non-contract fare?

You may also use a non-contract fare such as a through fare, special fare, commutation fare, excursion fare or reduced-rate round-trip fare in the following circumstances:

(a) Your agency determines prior to your travel that this type of service is practical and economical to the Government; and

(b) In the case of a fare that is restricted or has specific eligibility requirements, you know or reasonably can anticipate, based on the travel as planned, that you will use the ticket.

§ 301–10.109 What is my liability for unauthorized use of a non-contract carrier when contract service is available and I do not meet one of the exceptions for required use?

Any additional costs or penalties incurred by you resulting from unauthorized use of non-contract service are borne by you.

§ 301–10.110 May I use contract passenger transportation service for personal travel?

No.

§ 301–10.111 When may I use a reduced group or charter fare?

You may use a reduced group or charter fare when your agency has determined on an individual case basis prior to your travel that use of such a fare is economical to the Government and will not interfere with the conduct of official business.

§ 301–10.112 What must I do when different airlines furnish the same service at different fares?

When there is no contract fare, and common carriers furnish the same service at different fares between the same points for the same type of accommodations, you must use the lowest cost service unless your agency determines that the use of higher cost service is more advantageous to the Government.

§ 301–10.113 What must I do if I change or do not use a common carrier reservation?

If you know you will change or not use your reservation, you must take action to change or cancel it as prescribed by your agency. Also, you must report all changes of your reservation according to your agency's procedures in an effort to prevent losses to the Government. Failure to do so may subject you to liability for any resulting losses.

§ 301–10.114 What must I do with unused Government Transportation Request(s)(GTR(s)), ticket(s) or refund application(s)?

You must submit any unused GTR(s), unused ticket coupon(s), or refund application(s) to your agency in accordance with your agency's procedures.

§ 301–10.115 Am I authorized to receive a refund or credit for unused transportation?

No. You are not authorized to receive a refund, credit, or any other negotiable document from a carrier for unfurnished services (except as provided in § 301–10.115) or any portion of an unused ticket issued in exchange for a GTR or billed to an agency's centrally billed account. However, any charges billed directly to your individually billed Government charge card should be credited to your account.

§ 301–10.116 What must I do with compensation an airline gives me if it denies me a seat on a plane?

If you are performing official travel and a carrier denies you a confirmed reserved seat on a plane, you must give your agency any payment you receive for liquidated damages. You must ensure the carrier shows the ''Treasurer of the United States'' as payee on the compensation check and then forward the payment to the appropriate agency official.

§ 301–10.117 May I keep compensation an airline gives me for voluntarily vacating my seat on my scheduled airline flight when the airline asks for volunteers?

Yes:

(a) If voluntarily vacating your seat will not interfere with performing your official duties; and

(b) If additional travel expenses, incurred as a result of vacating your seat, are borne by you and are not reimbursed; but

(c) If volunteering delays your travel during duty hours, your agency will charge you with annual leave for the additional hours.

Airline Accommodations

§ 301–10.121 What classes of airline accommodations are available?

(a) Coach-class—The basic class of accommodations offered to travelers that is available to all passengers regardless of fare paid. This term applies when an airline offers two or more classes of accommodations, which includes tourist or economy.

(b) Premium-class—Any class of accommodations above coach, e.g., first or business.

(c) First-class—The highest class of accommodations on a multiple-class airline flight. When an airline flight only has two classes of accommodations, the higher-class, regardless of the term used for that class, is considered to be first class.

(d) Premium-class other than first-class—Any class of accommodations

between coach-class and first-class, e.g., business-class.

(e) Single-class—This term applies when an airline offers only one class of accommodation to all travelers.

§ 301–10.122 What class of airline accommodations must I use?

For official business travel, both domestic and international, you must use coach-class accommodations, except as provided under § § 301–10.123 and 301–10.124.

§ 301–10.123 When may I use first-class airline accommodations?

Only when your agency specifically authorizes/approves your use of first-class accommodations under paragraph (a) through (d) of this section.

(a) No other coach-class or premium-class other than first-class accommodation is reasonably available. ''Reasonably available'' means available on an airline that is scheduled to leave within 24 hours of your proposed departure time, or scheduled to arrive within 24 hours of your proposed arrival time.

(b) When use of first-class is necessary to accommodate a disability or other special need. A disability must be substantiated in writing by a competent medical authority. A special need must be substantiated in writing according to your agency's procedures. If you are authorized under § 301–13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use first-class accommodations if you require the attendant's services en route.

(c) When exceptional security circumstances require first-class travel. Exceptional security circumstances are determined by your agency and include, but are not limited to:

(1) Use of other than first-class accommodations would endanger your life or Government property;

(2) You are an agent on protective detail and you are accompanying an individual authorized to use first-class accommodations; or

(3) You are a courier or control officer accompanying controlled pouches or packages.

(d) When required because of agency mission.

§ 301–10.124 When may I use premium-class other than first-class airline accommodations?

Only when your agency specifically authorizes/approves your use of such accommodations under paragraphs (a) through (i) of this section.

(a) Regularly scheduled flights between origin/destination points (including connecting points) provide only premium-class accommodations and you certify such on your voucher; or

(b) No space is available in coach-class accommodations in time to accomplish the mission, which is urgent and cannot be postponed; or

(c) When use of premium-class other than first-class accommodations is necessary to accommodate your disability or other special need. Disability must be substantiated in writing by a competent medical authority. Special need must be substantiated in writing according to your agency's procedures. If you are authorized under § 301–13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use premium-class other than first-class accommodations if you require the attendant's services en route; or

(d) Security purposes or exceptional circumstances as determined by your agency make the use of premium-class other than first-class accommodations essential to the successful performance of the agency's mission; or

(e) Coach-class accommodations on an authorized/approved foreign air carrier do not provide adequate sanitation or health standards; or

(f) The use results in an overall cost savings to the Government by avoiding additional subsistence costs, overtime, or lost productive time while awaiting coach-class accommodations; or

(g) You are able to obtain the accommodations as an upgrade through the redemption of frequent traveler benefits in accordance with your agency's policies; or

(h) Your transportation costs are paid in full through agency acceptance of payment from a non-federal source in accordance with chapter 304 of this title; or

(i) Where the origin and/or destination is OCONUS and the scheduled flight time is in excess of 14 hours. In this instance you will not be eligible for a rest stop en route or a rest period upon arrival at your duty site.

Train

§ 301–10.160 What classes of train accommodations are available?

(a) *Coach-class*—The basic class of accommodations offered by a rail carrier to passengers that includes a level of service available to all passengers regardless of the fare paid. Coach-class includes reserved coach accommodations as well as slumber coach accommodations when overnight train travel is involved.

(b) *Slumber coach*—Includes slumber coach accommodations on trains offering such accommodations, or the lowest level of sleeping accommodations available on a train that does not offer slumber coach accommodations.

(c) *First-class*—Includes bedrooms, roomettes, club service, parlor car accommodations, or other premium accommodations.

§ 301–10.161 What class of train accommodations must I use?

You must use coach-class accommodations for all train travel, except when your agency authorizes first-class service.

§ 301–10.162 When may I use first-class train accommodations?

Only when your agency specifically authorizes/approves your use of first-class train accommodations under paragraphs (a) through (d) of this section.

(a) No coach-class accommodations are reasonably available. ''Reasonably available'' means available and scheduled to leave within 24 hours of the employee's proposed departure time, or scheduled to arrive within 24 hours of the employee's proposed arrival time.

(b) When use of first-class is necessary to accommodate a disability or other special need. A disability must be substantiated in writing by competent medical authority. A special need must be substantiated in writing according to your agency's procedures. If you are authorized under § 301–13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use first-class accommodations if you require the attendant's services en route.

(c) When exceptional security circumstances require first-class travel. Exceptional security circumstances include, but are not limited to:

(1) Use of other than first-class accommodations would endanger your life or Government property;

(2) You are an agent on protective detail and you are accompanying an individual authorized to use first-class accommodations; or

(3) You are a courier or control officer accompanying controlled pouches or packages.

(d) Inadequate foreign coach-class train accommodations. When coach-class train accommodations on a foreign rail carrier do not provide adequate sanitation or health standards.

§ 301–10.163 What is an extra-fare train?

A train that operates at an increased fare due to the extra performance of the train (i.e., faster speed or fewer stops).

§ 301–10.164 When may I use extra-fare train service?

You may travel coach-class on an extra-fare train whenever your agency determines it is more advantageous to the Government or is required for security reasons. The use of AMTRAK Metroliner coach accommodations is advantageous to the Government; AMTRAK Metroliner Club Service, however, is a first-class accommodation and may be authorized/approved only as provided in § 301–10.162 of this section.

Ship

§ 301–10.180 Must I travel by a U.S. flag ship?

Yes, when a U.S. flag ship is available unless the necessity of the mission requires the use of a foreign ship. (See 46 U.S.C. App. Sec. 1241.)

§ 301–10.181 What is my liability if I improperly use a foreign ship?

You are required to travel by U.S flag ship for the entire trip, unless use of a foreign ship has been authorized by your agency. Any cost that is attributed to improper or unauthorized use of a foreign ship is your responsibility.

§ 301–10.182 What classes of ship accommodations are available?

Accommodations on ships vary according to deck levels.

(a) *First-class*—All classes above the lowest first class, includes but is not limited to a suite.

(b) *Lowest first class*—The least expensive first class of reserved accommodations available on a ship.

§ 301–10.183 What class of ship accommodations must I use?

You must use the lowest first class accommodations when traveling by ship, except when your agency specifically authorizes/approves your use of first-class ship accommodations under paragraphs (a) through (c) of this section.

(a) Lowest first class accommodations are not available on the ship.

(b) When use of first-class is necessary to accommodate a disability or other special need. Disability must be substantiated in writing by competent medical authority. Special need must be substantiated in writing according to your agency's procedures. If you are authorized under § 301–13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use first-class accommodations if you require the attendant's services en route.

(c) When exceptional security circumstances require first-class travel. Exceptional security circumstances include, but are not limited to:

(1) The use of lowest first class accommodations would endanger your life or Government property; or

(2) You are an agent on protective detail and you are accompanying an individual authorized to use first-class accommodations; or

(3) You are a courier or control officer accompanying controlled pouches or packages.

Local Transit System

§ 301–10.190 When may I use a local transit system (bus, subway, or streetcar)?

(a) To, from, and between places of work. The use of bus, subway, or streetcar is an allowable expense for local travel between places of business at your official station or a TDY station, and between places of lodging and place of business at a TDY station.

(b) To places where meals can be obtained. Where the nature and location of the work at your TDY station are such that meals cannot be obtained there, travel to obtain meals at the nearest available place is an allowable expense. You must, however, attach a statement to your travel voucher explaining why such travel was necessary.

Subpart C—Government Vehicle

§ 301–10.200 What types of Government vehicles may my agency authorize me to use?

You may be authorized to use:

(a) A Government automobile in accordance with § 301–10.220 of this part;

(b) A Government aircraft in accordance with § 301–10.260 through § 301–10.262 of this part; and

(c) Other type of Government vehicle in accordance with any Government-issued rules governing its use.

§ 301–10.201 For what purposes may I use a Government vehicle other than a Government aircraft?

Only for official purposes which include transportation:

(a) Between places of official business;

(b) Between such places and places of temporary lodging when public transportation is unavailable or its use is impractical;

(c) Between either paragraphs (a) or (b) of this section and restaurants, drug stores, barber shops, places of worship, cleaning establishments, and similar places necessary for the sustenance, comfort, or health of the employee to foster the continued efficient performance of Government business; or

(d) As otherwise authorized by your agency under 31 U.S.C. 1344.

§ 301–10.202 What is my liability for unauthorized use of a Government vehicle?

You are responsible for any additional cost resulting from unauthorized use of a Government vehicle and you may be subject to administrative and/or criminal liability for misuse of Government property.

Government Automobiles

§ 301–10.220 What requirements must I meet to operate a Government automobile for official travel?

You must possess a valid State, District of Columbia, or territorial motor vehicle operator's license and have a travel authorization specifically authorizing the use of a Government-furnished automobile.

Government Aircraft

§ 301–10.260 When may I use a Government aircraft for travel?

Only for official purposes in accordance with 41 CFR 101–37.402.

§ 301–10.261 What requirements must I meet to operate a Government aircraft?

You must meet the aircrew qualification and certification requirements contained in 41 CFR 101–37.1212.

§ 301–10.262 What is my liability for unauthorized use of a Government aircraft?

You will be personally responsible for any additional cost resulting from unauthorized use of the aircraft as provided in 41 CFR 101–37.402 and 101–.37.403, and you may be subject to administrative and or criminal liability for misuse of Government property.

Subpart D—Privately Owned Vehicle (POV)

§ 301–10.300 When may I use a POV for official travel?

When authorized by your agency.

§ 301–10.301 How do I compute my mileage reimbursement?

You compute mileage reimbursement by multiplying the distance traveled, determined under § 301–10.302 of this subpart by the applicable mileage rate prescribed in § 301–10.303 of this subpart.

§ 301–10.302 How do I determine distance measurements for my travel?

If you travel by	The distance between your origin and destination is
Privately owned automobile or privately owned motorcycle.	As shown in standard highway mileage guides, or the actual miles driven as determined from odometer readings.
Privately owned aircraft	As determined from airway charts issued by the National Oceanic and Atmospheric Administration, Department of Commerce. You may include in your travel claim with an explanation any additional air mileage resulting from a detour necessary due to adverse weather, mechanical difficulty, or other unusual conditions. If a required deviation is such that airway mileage charts are not adequate to determine distance, you may use the formula of flight time multiplied by cruising speed of the aircraft to determine distance.

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
Privately-owned aircraft (e.g., helicopter, except an airplane)	Actual cost of operation (i.e., fuel, oil, plus the additional expenses listed in § 301–10.304).
Privately-owned airplane	85 cents per mile
Privately-owned automobile	31 cents per mile
Privately-owned motorcycle	25 cents per mile

§ 301–10.304 What expenses are allowable in addition to the allowance prescribed in § 301–10.303?

Following is a chart listing the reimbursable and non-reimbursable expenses:

Reimbursable expenses	Non-reimbursable expenses
Parking fees; ferry fees; bridge, road, and tunnel fees; and aircraft or airplane parking, landing, and tie-down fees.	Charges for repairs, depreciation, replacements, grease, oil, antifreeze, towage and similar speculative expenses.

§ 301–10.305 How is reimbursement handled if another person(s) travels in a POV with me?

If another employee(s) travels with you on the same trip in the same POV, mileage is payable to only one of you. No deduction will be made from your mileage allowance if other passengers contribute to defraying your expenses.

§ 301–10.306 What will be reimbursed if I am authorized to use a POV instead of a taxi for round-trip travel between my residence and office on a day of travel requiring an overnight stay?

If determined advantageous to the Government, you will be reimbursed on a mileage basis plus other allowable costs for round-trip travel on the beginning and/or ending of travel between the points involved.

§ 301–10.307 What will I be reimbursed if I use a POV to transport other employees?

Using a POV to transport other employees is strictly voluntary and you may be reimbursed in accordance with § 301–10.305.

§ 301–10.308 What will I be reimbursed if I park my POV at a common carrier terminal while I am away from my official station?

Your agency may reimburse your parking fee as an allowable transportation expense not to exceed the cost of taxi fare to/from the terminal.

§ 301–10.309 What will I be reimbursed if I am authorized to use common carrier transportation and I use a POV instead?

You will be reimbursed on a mileage basis (see § 301–10.303), plus per diem, not to exceed the total constructive cost of the authorized method of common carrier transportation plus per diem. Your agency must determine the constructive cost of transportation and per diem by common carrier under the rules in § 301–10.310.

§ 301–10.310 What will I be reimbursed if I am authorized to use a Government automobile and I use a privately owned automobile instead?

(a) *Reimbursement based on Government costs*—Unless you are committed to using a Government vehicle as provided in paragraph (b) of this section, your reimbursement will be limited to the cost that would be incurred for use of a Government automobile, which in CONUS is 23.5 cents per mile. If your agency determines the cost of providing a Government automobile would be higher because of unusual circumstances, it may allow reimbursement not to exceed the mileage rate provided in § 301–10.303 for a privately owned automobile.

In addition, you may be reimbursed other allowable expenses as provided in § 301–10.304.

(b) *Partial reimbursement when you are committed to use a Government owned automobile*—When you are committed to use a Government automobile or would not ordinarily be authorized to use a privately owned automobile due to the availability of a Government automobile, but nevertheless request to use a privately owned automobile, you will be reimbursed 10.5 cents per mile. This is the approximate cost of operating a Government automobile, fixed costs excluded. In addition, parking fees, bridge, road and tunnel fees are reimbursable.

Subpart E—Special Conveyances

§ 301–10.400 What types of special conveyances may my agency authorize me to use?

Your agency may authorize/approve use of:

(a) Taxicabs as specified in §§ 301–10.420 through 301–10.421 of this chapter;

(b) Commercial rental automobiles as specified in §§ 301–10.450 through 301–10.453 of this chapter; or

(c) Any other special conveyance when determined to be advantageous to the Government.

§ 301–10.401 What types of charges are reimbursable for use of a special conveyance?

Actual expenses that your agency determines are necessary, including, but not limited to:

(a) Gasoline and oil;

(b) Rental of a garage, hangar, or boathouse;

(c) Feeding and stabling of horses;

(d) Per diem of operator; and

(e) Ferriage, tolls, etc.

§ 301–10.402 What will I be reimbursed if I am authorized to use a special conveyance and I use a POV instead?

You will be reimbursed the mileage cost for the use of your POV, and additional expenses such as parking fees, bridge, road and tunnel fees, not to exceed the constructive cost of the special conveyance.

§ 301–10.403 What is the difference between a Government aircraft and an aircraft hired as a special conveyance?

A Government aircraft is any aircraft owned, leased, chartered, or rented and operated by the Government. An aircraft hired as a special conveyance is an aircraft that you, in your private capacity, rent, lease, or charter and operate.

Taxicabs, Shuttle Services, or Other Courtesy Transportation

§ 301–10.420 When may I use a taxi or shuttle service?

(a) *For local travel.* When your agency authorizes/approves, the use of a taxi for the following local travel is reimbursable:

(1) Between places of business at an official or TDY station;

(2) Between a place of lodging and a place of business at a temporary duty station; and

(3) To obtain meals at the nearest available place where the nature and location of the work at a TDY station are such that meals cannot be obtained there.

(b) *To and from a carrier terminal.* (1) General authorization. Except as provided in paragraph (b)(2) of this section, you will be reimbursed the usual fare plus tip for use of a taxicab or shuttle services in the following situations:

(i) Between a common carrier or other terminal and either your home or place of business at your official station, or your place of business or lodging at a TDY station; or

(ii) Between the carrier terminal and shuttle terminal.

(2) Courtesy transportation. You should use courtesy transportation service furnished by hotels/motels to the maximum extent possible as a first source of transportation between a place of lodging at the TDY station and a common carrier terminal. You will be reimbursed for tips when you use courtesy transportation service.

(3) Restrictions. When appropriate, your agency will restrict or place a monetary limit on the amount of reimbursement for the use of taxicabs under this paragraph when:

(i) Suitable Government or common carrier transportation service, including shuttle service, is available for all or part of the distance involved; or

(ii) Courtesy transportation service is provided by hotels/motels between the place of lodging at the TDY station and the common carrier terminal.

(c) *Between residence and office on day you perform official travel.* In addition to use of a taxi under paragraph (b) of this section, your agency may authorize/approve reimbursement of the usual taxicab fare plus tip in the following situations:

(1) From your home to your office on the day you depart the office on an official trip requiring at least one night's lodging; and

(2) From your office to your home on the day you return to the office from your trip.

(d) *Between residence and office in cases of necessity.* Your agency may authorize/approve the usual taxicab fare plus tip for travel between your office and home when you perform official business at your designated post of duty and:

(1) You are dependent on public transportation for officially ordered work outside regular working hours; and

(2) The travel between your office and home is during hours of infrequently scheduled public transportation or darkness.

§ 301–10.421 How much will my agency reimburse me for a tip to a taxi, shuttle service, or courtesy transportation driver?

An amount which your agency determines to be reasonable.

Rental Automobiles

§ 301.10.450 When can I use a rental vehicle?

Your agency must determine that use of a rental vehicle is advantageous to the Government and must specifically authorize such use.

§ 301–10.451 May I be reimbursed for the cost of collision damage waiver (CDW) or theft insurance?

(a) *General rule—no.* You will not be reimbursed for CDW or theft insurance for travel within CONUS for the following reasons:

(1) The Government is a self-insurer.

(2) Rental vehicles available under agreement(s) with the Government includes full coverage insurance for damages resulting from an accident while performing official travel.

(3) Any deductible amount paid by you may be reimbursed directly to you or directly to the rental agency if the damage occurred while you were performing official business.

(b) *Exception.* You will be reimbursed for collision damage waiver or theft insurance when you travel outside CONUS and such insurance is necessary because the rental or leasing agency requirements, foreign statute, or legal procedures could cause extreme difficulty for an employee involved in an accident.

§ 301–10.452 May I be reimbursed for personal accident insurance?

No. That is a personal expense and is not reimbursable.

§ 301–10.453 What is my liability for unauthorized use of a rental automobile obtained with Government funds?

You are responsible for any additional cost resulting from the unauthorized use of a commercial rental automobile for other than official travel-related purposes.

PART 301–11—PER DIEM EXPENSES

Subpart A—General Rules

Sec.

Subpart B—Lodgings-Plus Per Diem

Subpart C—Reduced Per Diem

Subpart D—Actual Expense

Authority: 5 U.S.C. 5707.

Subpart A—General Rules

§ 301–11.1 When am I eligible for an allowance (per diem or actual expense)?

When:

(a) You perform official travel away from your official station, or other areas defined by your agency;

(b) You incur per diem expenses while performing official travel; and

(c) You are in a travel status for more than 12 hours.

§ 301–11.2 Will I be reimbursed for per diem expenses if my official travel is 12 hours or less?

No.

§ 301–11.3 Must my agency pay an allowance (either a per diem allowance or actual expense)?

Yes, unless:

(a) You perform travel to a training event under the Government Employees Training Act (5 U.S.C. 4101–4118), and you agree not to be paid per diem expenses; or

(b) You perform pre-employment interview travel, and the interviewing agency does not authorize payment of per diem expenses.

§ 301–11.4 May I be reimbursed actual expense and per diem on the same trip?

Yes, you may be reimbursed both actual expense and per diem during a single trip, but only one method of reimbursement may be authorized for any given calendar day except as provided in § 301–11.305 or § 301–11.306. Your agency must determine when the transition between the reimbursement methods occurs.

§ 301–11.5 How will my per diem expenses be reimbursed?

Under one of the following methods for each day (or fraction thereof) you are in a travel status:

(a) Lodgings-plus per diem method;

(b) Reduced per diem method; or

(c) Actual expense method.

§ 301–11.6 Where do I find maximum per diem and actual expense rates?

For travel in	Rates set by	For per diem and actual expense see
Continental United States (CONUS).	General Services Administration ...	For Per Diem see Federal Travel Regulation 41 CFR chapter 301, Appendix A, or Internet at http://Policyworks.gov/perdiem; for actual expense see 41 CFR 301–11.303 and 301–11.305.
Non-foreign areas	Department of Defense (Per Diem, Travel and Transportation Allowance Committee (PDTATAC)).	Per Diem Bulletins issued by PDTATAC and published periodically in the FEDERAL REGISTER or Internet at http://www. dtic.mil/perdiem (Rates also appear in section 925 a per diem supplement to the Department of State Standardized Regulations (Government Civilians-Foreign Areas)).
Foreign areas	Department of State	A per diem supplement to section 925, Department of State Standardized Regulations (Government Civilians-Foreign Areas).

§ 301–11.7 What determines my maximum per diem reimbursement rate?

Where you obtain lodging determines your maximum per diem reimbursement rate. If you arrive at your lodging location after 12 midnight, you claim lodging cost for the preceding calendar day. If no lodging is required, the applicable M&IE reimbursement rate is the rate for the TDY location. (See § 301–11.102.)

§ 301–11.8 What is the maximum per diem rate I will receive if lodging is not available at my TDY location?

If lodging is not available at your TDY location, your agency may authorize or approve the maximum per diem rate for the location where lodging is obtained.

§ 301–11.9 When does per diem or actual expense entitlement start/stop?

Your per diem or actual expense entitlement starts on the day you depart your home, office, or other authorized point and ends on the day you return to

your home, office or other authorized point.

§ 301–11.10 Am I required to record departure/arrival dates and times on my travel claim?

You must record the date of departure from, and arrival at, the official station or any other place travel begins or ends. You must show this same information for points where you perform TDY or for a stopover or official rest stop location when the arrival or departure affects your per diem allowance or other travel expenses. You also should show the dates for other points visited. You do not have to record departure/arrival times, but you must annotate your travel claim when your travel is more than 12 hours but not exceeding 24 hours to reflect that fact.

§ 301–11.11 May I stay in a lodging facility of my choice?

Yes. You are encouraged to stay in lodging facilities that have been approved by FEMA as ''approved accommodations''. To ensure that you are staying in an approved facility, given the best available choices and/or obtaining Government discount rates, you are further encouraged to make lodging arrangement through your agency's TMS.

§ 301–11.12 How does the type of lodging I select affect my reimbursement?

Your agency will reimburse you for different types of lodging as follows:

(a) *Conventional lodgings.* (Hotel/motel, boarding house, etc.) You will be reimbursed the single occupancy rate.

(b) *Government quarters.* You will be reimbursed, as a lodging expense, the fee or service charge you pay for use of the quarters.

(c) *Lodging with friend(s) or relative(s) (with or without charge).* You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat ''token'' amount.

(d) *Nonconventional lodging.* You may be reimbursed the cost of other types of lodging when there are no conventional lodging facilities in the area (e.g., in remote areas) or when conventional facilities are in short supply because of an influx of attendees at a special event (e.g., World's Fair or international sporting event). Such lodging includes college dormitories or similar facilities or rooms not offered commercially but made available to the public by area residents in their homes.

(e) *Recreational vehicle (trailer/camper).* You may be reimbursed for expenses (parking fees, fees for connection, use, and disconnection of utilities, electricity, gas, water and sewage, bath or shower fees, and dumping fees) which may be considered as a lodging cost.

§ 301–11.13 How does sharing a room with another person affect my per diem reimbursement?

Your reimbursement is limited to one-half of the double occupancy rate if the person sharing the room is another Government employee on official travel. If the person sharing the room is not a Government employee on official travel, your reimbursement is limited to the single occupancy rate.

§ 301–11.14 How is my daily lodging rate computed when I rent lodging on a long-term basis?

When you obtain lodging on a long-term basis (e.g., weekly or monthly) your daily lodging rate is computed by dividing the total lodging cost by the number of days of occupancy for which you are entitled to per diem, provided the cost does not exceed the daily rate of conventional lodging. Otherwise the daily lodging cost is computed by dividing the total lodging cost by the number of days in the rental period. Reimbursement, including an appropriate amount for M&IE, may not exceed the maximum daily per diem rate for the TDY location.

§ 301–11.15 What expenses may be considered part of the daily lodging cost when I rent on a long-term basis?

When you rent a room, apartment, house, or other lodging on a long-term basis (e.g., weekly, monthly), the following expenses may be considered part of the lodging cost:

(a) The rental cost for a furnished dwelling; if unfurnished, the rental cost of the dwelling and the cost of appropriate and necessary furniture and appliances (e.g., stove, refrigerator, chairs, tables, bed, sofa, television, or vacuum cleaner);

(b) Cost of connecting/disconnecting and using utilities;

(c) Cost of reasonable maid fees and cleaning charges;

(d) Monthly telephone use fee (does not include installation and long-distance calls); and,

(e) If ordinarily included in the price of a hotel/motel room in the area concerned, the cost of special user fees (e.g., cable TV charges and plug-in charges for automobile head bolt heaters).

§ 301–11.16 What reimbursement will I receive if I prepay my lodging expenses and my TDY is curtailed, canceled or interrupted for official purposes or for other reasons beyond my control that are acceptable to my agency?

If you sought to obtain a refund or otherwise took steps to minimize the cost, your agency may reimburse expenses that are not refundable, including a forfeited rental deposit.

§ 301–11.17 If my agency authorizes per diem reimbursement, will it reduce my M&IE allowance for a meal(s) provided by a common carrier or for a complimentary meal(s) provided by a hotel/motel?

No. A meal provided by a common carrier or a complimentary meal provided by a hotel/motel does not affect your per diem.

§ 301–11.18 What M&IE rate will I receive if a meal(s) is furnished at nominal or no cost by the Government or is included in the registration fee?

Your M&IE rate must be adjusted for a meal(s) furnished to you (except as provided in § 301–11.17), with or without cost, by deducting the appropriate amount shown in the chart in this section for CONUS travel, Reference Appendix B of this chapter for OCONUS travel, or any method determined by your agency. If you pay for a meal that has been previously deducted, your agency will reimburse you up to the deduction amount. The total amount of deductions made will not cause you to receive less than the amount allowed for incidental expenses.

M&IE	$30	$34	$38	$42
Breakfast	6	7	8	9
Lunch	6	7	8	9
Dinner	16	18	20	22
Incidentals	2	2	2	2

§ 301–11.19 How is my per diem calculated when I travel across the international dateline (IDL)?

When you cross the IDL your actual elapsed travel time will be used to compute your per diem entitlement rather than calendar days.

§ 301–11.20 May my agency authorize a rest period for me while I am traveling?

(a) Your agency may authorize a rest period not in excess of 24 hours at either an intermediate point or at your destination if:

(1) Either your origin or destination point is OCONUS;

(2) Your scheduled flight time, including stopovers, exceeds 14 hours;

(3) Travel is by a direct or usually traveled route; and

(4) Travel is by less than premium-class service.

(b) When a rest stop is authorized the applicable per diem rate is the rate for the rest stop location.

§ 301–11.21 Will I be reimbursed for per diem or actual expenses on leave or non-workdays (weekend, legal Federal Government holiday, or other scheduled non-workdays) while I am on official travel?

(a) In general, you will be reimbursed as long as your travel status requires your stay to include a non-workday, (e.g., if you are on travel through Friday and again starting Monday you will be reimbursed for Saturday and Sunday), however, your agency should determine the most cost effective situation (i.e., remaining in a travel status and paying per diem or actual expenses or permitting your return to your official station).

(b) Your agency will determine whether you will be reimbursed for non-workdays when you take leave immediately (e.g., Friday or Monday) before of after the non-workday(s).

Note to § 301–11.21: If emergency travel is involved due to an incapacitating illness or injury, the rules in part 301–30 of this chapter govern.

§ 301–11.22 Am I entitled to per diem or actual expense reimbursement if I am required to return to my official station on a non-workday?

If required by your agency to return to your official station on a non-workday, you will be reimbursed the amount allowable for return travel.

§ 301–11.23 Are there any other circumstances when my agency may reimburse me to return home or to my official station for non-workdays during a TDY assignment?

Your agency may authorize per diem or actual expense and round-trip transportation expenses for periodic return travel on non-workdays to your home or official station under the following circumstances:

(a) The agency requires you to return to your official station to perform official business; or

(b) The agency will realize a substantial cost savings by returning you home; or

(c) Periodic return travel home is justified incident to an extended TDY assignment.

§ 301–11.24 What reimbursement will I receive if I voluntarily return home or to my official station on non-workdays during my TDY assignment?

If you voluntarily return home or to your official station on non-workdays during a TDY assignment, the maximum reimbursement for round trip transportation and per diem or actual expense is limited to what would have been allowed had you remained at the TDY location.

§ 301–11.25 Must I provide receipts to substantiate my claimed travel expenses?

Yes, you must provide a lodging receipt and either a receipt for any authorized expenses incurred costing over $75, or a reason acceptable to your agency explaining why you are unable to provide the necessary receipt.

§ 301–11.26 How do I get a per diem rate increased?

If you travel to a location where the per diem rate is insufficient to meet necessary expenses, you may submit a request, containing pertinent lodging & meal cost data, through your agency asking that the location be surveyed. Depending on the location in question your agency may submit the survey request to:

For CONUS locations	For non-foreign area locations	For foreign area locations
General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation, Management Policy Division (MTT), Washington, DC 20405.	Department of Defense, Per Diem, Travel and Transportation, Allowance Committee (PDTATAC), Hoffman Building #1, Room 836, 2461 Eisenhower Ave, Alexandria, VA 22331–1300.	Department of State, Director of Allowances, State Annex 29, Room 262, Washington, DC 20522–2902.

§ 301–11.27 Are taxes included in the lodging portion of the Government per diem rate?

Yes. However, there may be lodging facilities that set their room rates at the maximum lodging rate and then add on taxes.

§ 301–11.28 As a traveler on official business, am I required to pay applicable lodging taxes?

Yes, unless exempted by the State or local jurisdiction.

§ 301–11.29 Are lodging facilities required to accept a generic federal, state or local tax exempt certificate?

Exemptions from taxes for Federal travelers, and the forms required to claim them, vary from location to location. The GSA Travel Homepage (*http://policyworks.gov/travel*) lists jurisdictions where tax exempt certificates should be honored.

§ 301–11.30 What is my option if the Government lodging rate plus applicable taxes exceeds my lodging reimbursement?

You may request reimbursement on an actual expense basis, not to exceed 300 percent of the maximum per diem allowance. Approval of actual expenses is at the discretion of your agency.

Subpart B—Lodgings-Plus Per Diem

§ 301–11.100 What will I be paid for lodging under Lodgings-plus per diem?

When travel is more than 12 hours and overnight lodging is required you are reimbursed your actual lodging cost not to exceed the maximum lodging rate for the TDY location or stopover point.

§ 301–11.101 What allowance will I be paid for M&IE?

(a) Except as provided in paragraph (b) of this section, your allowance is as shown in the following table:

When travel is		Your allowance is
More than 12 but less than 24 hours	.....	75 percent of the applicable M&IE rate.
24 hours or more, on	The day of departure	75 percent of the applicable M&IE rate.
	Full days of travel	100 percent of the applicable M&IE rate.
	The last day of travel	75 percent of the applicable M&IE rate.

(b) If you travel by ship, either commercial or Government, your agency will determine an appropriate M&IE rate within the applicable maximum rate allowable.

§ 301–11.102 What is the applicable M&IE rate?

For days of travel which		Your applicable M&IE rate is
Require lodging		The M&IE rate applicable for the TDY location.
Do not require lodging, and	Travel is more than 12 hours but less than 24 hours	The M&IE rate applicable to the TDY site (or the highest M&IE rate applicable when multiple locations are involved).
	Travel is 24 hours or more, and you are traveling to a new TDY site or stopover point at midnight.	The M&IE rate applicable to the new TDY site or stopover point.
	Travel is 24 hours or more, and you are returning to your official station.	The M&IE rate applicable to the previous day of travel.

Subpart C—Reduced Per Diem

§ 301–11.200 Under what circumstances may my agency prescribe a reduced per diem rate lower than the prescribed maximum?

Under the following circumstances:

(a) When your agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate; and

(b) The lowest authorized per diem rate must be stated in your travel authorization in advance of your travel.

Subpart D—Actual Expense

§ 301–11.300 When is actual expense reimbursement warranted?

When:

(a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;

(b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;

(c) Because of mission requirements; or

(d) Any other reason approved within your agency.

§ 301–11.301 Who in my agency can authorize/approve my request for actual expense?

Any official designated by the head of your agency.

§ 301–11.302 When should I request authorization for reimbursement under actual expense?

Request for authorization for reimbursement under actual expense should be made in advance of travel. However, subject to your agency's policy, after the fact approvals may be granted when supported by an explanation acceptable to your agency.

§ 301–11.303 What is the maximum amount that I may be reimbursed under actual expense?

The maximum amount that you may be reimbursed under actual expense is limited to 300 percent (rounded to the next higher dollar) of the applicable maximum per diem rate. However, subject to your agency's policy, a lesser amount may be authorized.

§ 301–11.304 What if my expenses are less than the authorized amount?

When authorized actual expense and your expenses are less than the locality per diem rate or the authorized amount, reimbursement is limited to the expenses incurred.

§ 301–11.305 What if my actual expenses exceed the 300 percent ceiling?

Your reimbursement is limited to the 300 percent ceiling. There is no authority to exceed this ceiling.

§ 301–11.306 What expenses am I required to itemize under actual expense?

You must itemize all expenses, including meals, (each meal must be itemized separately) for which you will be reimbursed under actual expense. However, expenses that do not accrue daily (e.g., laundry, dry cleaning, etc.) may be averaged over the number of days your agency authorizes/approves actual expenses. Receipts are required for lodging, regardless of amount and any individual meal when the cost exceeds $75. Your agency may require receipts for other allowable per diem expenses, but it must inform you of this requirement in advance of travel. But not that when your agency limits M&IE reimbursement to either the prescribed maximum M&IE rate for the locality concerned or a reduced M&IE rate, it may or may not require M&IE itemization at its discretion.

PART 301–12—MISCELLANEOUS EXPENSES

Sec.

Authority: 5 U.S.C. 5707.

§ 301–12.1 What miscellaneous expenses are reimbursable?

Your agency may authorize or approve reimbursement of miscellaneous travel expenses. Examples of such expenses include but are not limited to the following:

General expenses	Fees to obtain money	Special expenses of foreign travel
Baggage expenses as described in § 301–12.2	Fees for travelers checks	Commissions on conversion of foreign currency.
Services of guides, interpreters, drivers	Fees for money orders	Passport and/or visa fees.
Use of computers, printers, faxing machines, and scanners.	Fees for certified checks	Costs of photographs for passports and visas.
Services of typists, data processors, or stenographers.	Transaction fees for use of automated teller machines (ATMs)—Government charge card.	Foreign country exit fees.
Storage of property used on official business		Costs of birth, health, and identity certificates.
Hire of conference center room or hotel room for official business.		Charges for inoculations that cannot be obtained through a Federal dispensary.
Official telephone calls/service (see note).		
Faxes, telegrams, cablegrams, or radiograms.		

Note to § 301–12.1: You should use Government provided services for all official communications. When they are not available, commercial services may be used. Reimbursement may be authorized or approved by your agency.

§ 301–12.2 What baggage expenses may my agency pay?

Your agency may reimburse expenses related to baggage as follows:

(a) Transportation charges for authorized excess;

(b) Necessary charges for transferring baggage;

(c) Necessary charges for storage of baggage when such charges are the result of official business;

(d) Charges for checking baggage; and

(e) Charges or tips at transportation terminals for handling Government property carried by the traveler.

PART 301–13—TRAVEL OF AN EMPLOYEE WITH SPECIAL NEEDS

Sec.

Authority: 5 U.S.C. 5707.

§ 301–13.1 What is the policy for paying additional travel expenses incurred by an employee with a special need?

To provide reasonable accommodations to an employee with a special need by paying for additional travel expenses incurred.

§ 301–13.2 Under what conditions will my agency pay for my additional travel expense(s) under this part?

When an additional travel expense is necessary to accommodate a special physical need which is either:

(a) Clearly visible and discernible; or

(b) Substantiated in writing by a competent medical authority.

§ 301–13.3 What additional travel expenses may my agency pay under this part?

The following expenses:

(a) Transportation and per diem expenses incurred by a family member or other attendant who must travel with you to make the trip possible;

(b) Specialized transportation to, from, and/or at the TDY duty location;

(c) Specialized services provided by a common carrier to accommodate your special need;

(d) Costs for handling your baggage that are a direct result of your special need;

(e) Renting and/or transporting a wheelchair; and

(f) Premium-class accommodations when necessary to accommodate your special need, under Subpart B of Part 301–10 of this chapter.

PART 301–30—EMERGENCY TRAVEL

Sec.

Authority: 5 U.S.C. 5707.

§ 301–30.1 What is emergency travel?

Travel which results from:

(a) Your becoming incapacitated by illness or injury not due to your own misconduct; or

(b) The death or serious illness of a member of your family; or

(c) A catastrophic occurrence or impending disaster, such as fire, flood, or act of God, which directly affects your home.

§ 301–30.2 What is considered to be ''family'' with respect to emergency travel?

''Family'' includes any member of your immediate family, as defined in § 300–3.1. However, your agency may, on a case-by-case basis, expand this definition to include other members of your and/or your spouse's extended family.

§ 301–30.3 What should I do if I have to interrupt or discontinue my TDY travel?

Contact your travel authorizing/approving official for instructions as soon as possible.

§ 301–30.4 When an illness or injury occurs on TDY, what expenses may be allowed?

Your agency may pay:

(a) Per diem at the location where you incurred or were treated for incapacitating illness or injury for a reasonable period of time (generally 14 calendar days). However, your agency may pay for a longer period.

(b) Transportation and per diem expense for travel to an alternate location to receive treatment.

(c) Transportation and per diem expense to return to your official station.

§ 301–30.5 Are there any limitations to the payment of these expenses?

Expenses are not payable when:

(a) Confined to:

(1) A medical facility within the proximity of your official duty station.

(2) The same medical facility you would have been admitted to if your incapacitating illness or injury occurred at your official station.

(b) The Government provides or reimburses you for hospitalization under any Federal statute (including hospitalization in a Department of Veterans Affairs (VA) Medical center or military hospital). However, per diem expenses are payable if your hospitalization is paid under the Federal Employees Health Benefits Program (5 U.S.C. 8901–8913).

PART 301–31—THREATENED LAW ENFORCEMENT/INVESTIGATIVE EMPLOYEES

Sec.

Authority: 5 U.S.C. 5707.

§ 301–31.1 Why pay subsistence and transportation expenses for threatened law enforcement/investigative employees?

To protect a law enforcement/investigative employee and his/her immediate family when their lives are placed in jeopardy as a result of the employee's assigned duties.

§ 301–31.2 What is ''family'' with respect to threatened law enforcement/investigative employees?

Generally, ''family'' includes any member of your immediate family, as defined in § 300–3.1 of this title. However, your agency may, on a case-by-case basis, expand this definition to

include other members of you and/or your spouse's extended family.

§ 301–31.3 Are members of my family and I eligible for payment of subsistence and transportation expense?

Yes, if you serve in a law enforcement, investigative, or similar capacity for special law enforcement/investigative purposes and your agency authorizes such expenses.

§ 301–31.4 Must my agency pay transportation and subsistence expenses?

No. Your agency decides when it is appropriate to pay these expenses based on the nature of the threat against your life and/or the life of a member(s) of your immediate family.

§ 301–31.5 Under what conditions may my agency pay for transportation and subsistence expenses?

When your agency determines that a threat against you or a member(s) of your immediate family justifies moving you and/or your family to temporary living accommodations at or away from your official station.

§ 301–31.6 Where must I and/or my family obtain lodging?

Your agency designates the area where you and/or your family should obtain lodging. It may be within your official station or at an alternate location.

§ 301–31.7 May my family and I occupy lodging at different locations?

Yes, if authorized by your agency.

§ 301–31.8 What transportation expenses may my agency pay?

Your agency may pay transportation expenses authorized by part § 301–10 **of this chapter to transport you and/or your family to/from a temporary location.**

§ 301–31.9 What subsistence expense may my agency pay?

Only your lodging cost may be paid. However, your agency may pay for meals and laundry/cleaning expenses if:

(a) Your temporary living accommodations do not have kitchen or laundry facilities; or

(b) Your agency determines that other extenuating circumstances exist which necessitate payment of these expenses.

§ 301–31.10 How will my agency pay my subsistence expenses?

Your agency will pay your actual subsistence expenses not to exceed the ''maximum allowable amount'' for the period you or your family occupy temporary living accommodations. The ''maximum allowable amount'' is the ''maximum daily amount'' multiplied by the number of days you or your family occupy temporary living accommodations not to exceed the number of days authorized. The ''maximum daily amount'' is determined by adding the rates in the following table for you and each member of your family authorized to occupy temporary living accommodations:

If your agency authorizes	The ''maximum daily amount'' of per diem expenses that		
	You or your unaccompanied spouse or other unaccompanied family member may receive is	Your accompanied spouse or a member of your family who is age 12 or older may receive is	A member of your family who is under age 12 may receive is
Payment of only lodging expenses	The maximum lodging amount applicable to the locality.	.75 times the maximum lodging amount applicable to the locality.	.5 times the maximum lodging amount applicable to the locality.
Payment for lodging, meals, and other per diem expenses.	The maximum per diem rate applicable to the locality.	.75 times the maximum per diem rate applicable to the locality..	.5 times the maximum per diem rate applicable to the locality.

§ 301–31.11 May my agency pay me a per diem allowance instead of actual expenses?

No.

§ 301–31.12 Must I keep track of my expenses?

Yes. You must keep track of your actual expenses as described in § 301–11 of this chapter.

§ 301–31.13 How long may my agency pay for subsistence expenses under this part?

Your agency may pay for subsistence expenses up to 60 days. However, your agency may pay for additional periods if it determines, that an extension is justified.

§ 301–31.14 May I receive a travel advance for transportation and/or subsistence expenses?

Yes, you may receive a travel advance under § 301–51.200 of this chapter for up to a 30-day period at a time to cover expenses allowable. Your travel advance may not exceed the maximum allowable amount authorized under § 301–31.10, and you will be required to reimburse your agency for any portion of the advance disallowed or not spent.

§ 301–31.15 What documentation must I provide for reimbursement?

You must provide receipts or any other documentation required by your agency. However, in instances when documentation might compromise the security of the individuals involved, the head of the agency may waive these requirements.

SUBCHAPTER C—ARRANGING FOR TRAVEL SERVICES, PAYING TRAVEL EXPENSES, AND CLAIMING REIMBURSEMENT

PART 301–50—ARRANGING FOR TRAVEL SERVICES

Sec.

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c).

§ 301–50.1 How should I arrange my travel?

If your agency provides travel management services under a Government contract, you must use those services, to arrange for common carrier transportation, lodging, and rental car(s). If your agency does not provide travel management services under a Government contract, you must arrange your travel according to your agency's policy. Services under a Government contract may be furnished by a commercial travel agent, electronic travel services system, or other travel management services provider.

§ 301–50.2 What is my liability if I use an unauthorized travel agent or unauthorized travel management system?

You are responsible for any additional costs that result from the unauthorized use, and you are subject to any penalties your agency may impose.

§ 301–50.3 Are there any limits on the travel arrangements I may make?

Yes. If the GSA city-pair fare contract for passenger transportation services is available to you, you must use the contract carrier. You should also use any preferred value lodging programs and rental car arrangements in which your agency participates.

PART 301–51—PAYING TRAVEL EXPENSES

Subpart A—General

Subpart B—Paying for Common Carrier Transportation

Subpart C—Receiving Travel Advances

Authority: 5 U.S.C. 5707.

Subpart A—General

§ 301–51.1 How may I pay for official travel expenses?

(a) Contractor-issued individually billed travel card;

(b) Centrally billed account;

(c) Government Transportation Request (GTR);

(d) Contractor issued travelers check;

(e) Cash obtained from an advance;

(f) Frequent traveler credits; and

(g) Personal funds, including cash or a personal charge card.

Note to § 301–51.1: City pair contractors are not required to accept payment other than by methods in paragraphs (a) through (c) of this section. Also see § 301–51.100 of this part.

§ 301–51.2 What is the preferred method of payment for official travel expenses?

When authorized by your agency, use your contractor-issued individually billed travel card to the maximum extent possible for all official travel expenses, except those billed directly to your agency. Cash should be used only to pay for those expenses which, as a general rule, cannot be charged; e.g., laundry/dry cleaning, parking, local transportation system, taxi, and tips. The ATM feature of your travel card should be used, when authorized to obtain cash for official travel expenses.

§ 301–51.3 When must I use excess or near-excess foreign currencies owned by the United States?

Your agency TMC should have available information from the Department of State and Office of Management and Budget Bulletins when the use of excess or near excess foreign currency will be required to pay for travel expenses.

Subpart B—Paying for common Carrier Transportation

§ 301–51.100 What method of payment must I use to procure common carrier transportation?

You must use a contractor-issued individually billed travel card, centrally billed account, or GTR to procure contract passenger transportation services. For all other common carrier transportation, you must use one of the methods specified in the following table:

For passenger transportation services costing	You must use	Unless
(a) $10 or less, and air excess baggage charges of $15 or less for each leg of a trip.	A contractor-issued individually billed travel card, centrally billed account, or.	Use of the contractor-issued individually billed travel card is not accepted or its use is impracticable, special circum-stances justify the use of a GTR or Government excess baggage authorization ticket (GEBAT).
(b) More than $10, but not more than $100.	A contractor-issued individually billed travel card, centrally billed account, or GTR.	None of the other methods are practicable, you may use cash.
(c) More than $100	Only a contractor-issued individually billed travel card, centrally billed account, or GTR.	Your agency authorizes you to use a reduced fare for group, charter, or excursion arrangements or under emergency circumstances where the use of other methods is not possible.

§ 301–51.101 Which payment methods are considered the equivalent of cash?

Use of one of the following payment methods of this section to procure common carrier transportation is considered the equivalent of cash and you must comply with the rules in 41 CFR 101–41.203–2 that limit the use of cash for such purposes.

(a) Personal credit cards;

(b) Cash withdrawals obtained from an ATM using a contractor-issued individually billed travel card; and

(c) Checks, both personal and travelers (including those obtained through a travel payment system services program).

§ 301–51.102 How is my transportation reimbursement affected if I make an unauthorized cash purchase of common carrier transportation?

If you are a new employee or an invitational or infrequent traveler who is unaware of proper procedures for purchasing common carrier transportation, your agency may allow reimbursement for the full cost of the transportation. In all other instances, your reimbursement shall be limited to the cost of such transportation using the authorized method of payment.

§ 301–51.103 What is my liability if I lose a GTR?

You are liable for any Government expenditure that is caused by your negligence in safeguarding the GTR or tickets received in exchange for the GTR. To avoid liability, immediately report a lost or stolen GTR to your administrative office. If the lost or stolen GTR shows the carrier service desired, and point of origin, promptly notify in writing the named carrier and other local initial carriers. Do not use a GTR that is recovered after having been reported as lost or stolen. Instead, report the GTR to your administrative office.

Subpart C—Receiving Travel Advances

§ 301–51.200 For what expenses may I receive a travel advance?

For	You may receive an advance
(a) Cash transaction expenses (i.e., expenses that as a general rule cannot be charged and must be paid using cash, a personal check, or travelers check). (1) M&IE covered by the per diem allowance or actual expenses allowance; (2) Miscellaneous transportation expenses such as local transportation system and taxi fares; parking fees; ferry fees; bridge, road, and tunnel fees; and aircraft parking, landing, and tie-down fees; (3) Gasoline and other variable expenses covered by the mileage allowance for advantageous use of a privately owned automobile for official business; and (4) Other authorized miscellaneous expenses that cannot be charged using a charge card and for which a cost can be estimated.	Any time you travel.
(b) Non-cash transaction expenses (i.e., lodging, common carrier)	Only in the following situations: *(1) Charge card not expected to be accepted.* *(2) Charge card issuance denied.* Your agency has decided not to provide you a contractor-issued individually billed travel card. *(3) Official change of station.* Your agency determines that use of a contractor-issued individually billed travel card would not be feasible incident to a transfer, particu-larly a transfer to another agency. *(4) Financial hardship would be incurred.*

§ 301–51.201 What is the maximum amount that my agency may advance?

The amount your agency advances you may not exceed the following amounts:

For	The maximum amount your agency may advance is
Cash transaction expenses	The estimated amount of your cash transaction expenses. (For M&IE, your advance is limited to the M&IE rate under the lodgings-plus per diem method.)
Non-cash trans-action expenses (See § 301–51.200(b)).	Generally zero. However, your agency may advance up to the full amount of your expected non-cash transaction expenses for an individual trip (or not to exceed a 45-day period for an open authorization) in accordance with § 301–51.200(b).

§ 301–51.202 When must I account for my advance?

You must file a travel claim which accounts for your advance after completion of your assignment, in accordance with your agency's policy. If you are in a continuous travel status (e.g., an auditor or inspector) or if you submit periodic reimbursement vouchers on an individual trip authorization, your agency may reimburse you the full amount of your travel expenses without any deduction of your advance until such time as you file a final voucher. If the amount advanced is less than the amount of the voucher on which it is deducted, you will be reimbursed the net amount. If the advance exceeds the reimbursable amount, you must immediately refund the excess.

§ 301–51.203 What must I do about my advance if my trip is canceled or postponed indefinitely?

Promptly notify the appropriate agency officials and refund any monies advanced in connection with the authorized travel.

PART 301–52—CLAIMING REIMBURSEMENT

Sec.

Authority: 5 U.S.C. 5707.

§ 301–52.1 Must I file a travel claim?

Yes.

§ 301–52.2 What information must I provide in my travel claim?

You must provide the following:

(a) An itemized list of expenses and other information (specified in the listing of required standard data elements contained in Appendix C of this chapter, and any additional information your agency may specifically require), except:

(1) You may aggregate expenses for local telephone calls, local metropolitan transportation fares, and parking meter fees, except any individual expenses costing over $75 must be listed separately;

(2) When you are authorized lodgings-plus per diem, you must state the M&IE allowance on a daily basis;

(3) When you are authorized a reduced per diem, you must state the reduced rate your agency authorizes on a daily basis; and

(4) When your agency limits M&IE reimbursement to the prescribed maximum M&IE for the locality

concerned, you must state the reduced rate on a daily basis.

(5) Your agency may or may not require itemization of M&IE when reimbursement is limited to either the maximum M&IE locality rate or a reduced M&IE rate is authorized.

(b) The type of leave and the number of hours of leave for each day;

(c) The date of arrival and departure from the TDY station and any non-duty points visited when you travel by an indirect route other than a stopover to change planes or embark/disembark passengers;

(d) A signed statement, ''I hereby assign to the United States any rights I may have against other parties in connection with any reimbursable carrier transportation charges described herein,'' when you use cash to pay for common carrier transportation.

§ 301–52.3 Am I required to file a travel claim in a specific format and must the claim be signed?

Yes, in a format prescribed by your agency. If the prescribed travel claim is hardcopy, the claim must be signed in ink; if your agency has electronic processing, use your electronic signature. Any alterations or erasures to your travel claim must be initialed.

§ 301–52.4 What must I provide with my travel claim?

You must provide:

(a) Evidence of your necessary travel authorizations including any necessary special authorizations;

(b) Receipts for:

(1) Any lodging expense, except when you are authorized a fixed reduced per diem allowance; and

(2) Any other expense costing over $75. If it is impracticable to furnish receipts in any instance as required by this subtitle, the failure to do so must be fully explained on the travel voucher. Mere inconvenience in the matter of taking receipts will not be considered.

§ 301–52.5 Is there any instance where I am exempt from the receipt requirement in § 301–52.4?

Yes, your agency may exempt an expenditure for the receipt requirement because the expenditure is confidential.

§ 301–52.6 How do I submit a travel claim?

You must submit your travel claim in accordance with administrative procedures prescribed by your agency.

§ 301–52.7 When must I submit my travel claim?

Unless your agency administratively requires you to submit your travel claim within a shorter timeframe, you must submit your travel claim as follows:

(a) Within 5 working days after you complete your trip or period of travel; or

(b) Every 30 days if you are on continuous travel status.

§ 301–52.8 May my agency disallow payment of a claimed item?

Yes, if you do not:

(a) Provide proper itemization of an expense;

(b) Provide receipt or other documentation required to support your claim; and

(c) Claim an expense which is not authorized.

§ 301–52.9 What will my agency do when it disallows an expense?

Your agency will disallow your claim for that expense, issue you a notice of disallowance, and pay your claim for those items which are not disallowed.

§ 301–52.10 May I challenge my agency's disallowance of my claim?

Yes, you may request reconsideration of your claim if you have additional facts or documentation to support your request for reconsideration.

§ 301–52.11 What must I do to challenge a disallowed claim?

You must:

(a) File a new claim.

(b) Provide full itemization for all disallowed items reclaimed.

(c) Provide receipts for all disallowed items reclaimed that require receipts, except that you do not have to provide a receipt if your agency already has the receipt.

(d) Provide a copy of the notice of disallowance.

(e) State the proper authority for your claim if you are challenging your agency's application of the law or statute.

(f) Follow your agency's procedures for challenging disallowed claims.

(g) If after reconsideration by your agency your claim is still denied, you may submit your claim for adjudication to the GSA Board of Contract Appeals in accordance with 48 CFR part 6104.

§ 301–52.12 What happens if I attempt to defraud the Government?

(a) You forfeit reimbursement pursuant to 28 U.S.C. 2514; and

(b) You may be subject under 18 U.S.C. 287 and 1001 to one, or both, of the following:

(1) A fine of not more than $10,000, or

(2) Imprisonment for not more than 5 years.

§ 301–52.13 Should I keep itemized records of my expenses while on travel?

Yes. You will find it helpful to keep a record of your expenses by date of the expense to aid you in preparing your travel claim or for tax purposes.

§ 301–52.14 What must I do with any travel advance outstanding at the time I submit my travel claim?

You must account for the travel advance in accordance with your agency's procedures.

§ 301–52.15 What must I do with any passenger coupon for transportation costing over $75, purchased with cash?

You must submit the passenger coupons to your agency in accordance with your agency's procedures.

§ 301–52.16 What must I do with any unused tickets, coupons, or other evidence of refund?

You must submit the ticket coupons to your agency in accordance with your agency's procedures.

PART 301–53—USING PROMOTIONAL MATERIALS AND FREQUENT TRAVELER PROGRAMS

Sec.

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 301–53.1 What must I do with promotional benefits or materials I receive from a travel service provider?

Any promotional benefits or material you receive from a private source in connection with official travel are considered property of the Government. You must:

(a) Accept the benefits or materials on behalf of the Federal Government; and

(b) Turn the benefits or material over to your agency in accordance with your

agency's procedures established under 41 CFR 101–25.103.

§ 301–53.2 Should I join a frequent traveler program?

Yes. You are encouraged to join frequent traveler programs to realize cost savings or reduce official travel cost.

§ 301–53.3 May my agency reimburse membership fees in a frequent traveler program?

Yes, if the benefits of membership are expected to exceed the cost of membership.

§ 301–53.4 How may I use frequent traveler benefits?

You may use frequent traveler benefits earned on official travel to obtain travel services for a subsequent official travel assignment(s).

§ 301–53.5 Under what circumstances may I use frequent traveler benefits to upgrade my transportation class of service?

You may use frequent travel benefits earned on official travel to upgrade your transportation class of service when your agency's policies authorize you to upgrade to premium-class other than first-class airline accommodations, solely through redemption of frequent traveler benefits or when the requirements for first-class or premium other than first class airline accommodations are met in accordance with § § 301–10.123 and 301–10.124.

§ 301–53.6 When my agency participates in a mandatory travel management program, may I select a travel service provider based on whether it provides frequent travel credits?

No. You must use the travel management program for which your agency is a mandatory user, including contract passenger transportation service when such programs are available.

§ 301–53.7 How should I handle frequent traveler credits when I accumulate both personal and official credits from a single travel service provider?

You should establish separate accounts for personal and official use.

§ 301–53.8 What are my options if I cannot establish separate frequent traveler accounts?

You must be able to account for every credit and debit in your frequent traveler account, and submit an accounting to your agency upon request. The accounting must specify:

(a) The date and amount of all credits you receive for both personal and official travel, including credits (e.g., credits from a travel service vendor credit card).

(b) The date and amount of any debit to your account for both personal and official travel.

§ 301–53.9 What is my liability for improper use of frequent traveler benefits?

You may be subject to:

(a) Disciplinary action by your agency, which may include repayment of the cost of the ticket; and

(b) Criminal sanctions, including a fine and/or imprisonment.

§ 301–53.10 Is there any instance when I may make personal use of benefits furnished by a travel service provider?

Yes, you may use benefits (e.g., free meals, check-cashing privileges, or memberships in executive clubs) only if:

(a) The Government can not use the benefit;

(b) To receive the immediate benefit, you do not forfeit a future benefit the Government could use; and

(c) The benefit can not be redeemed for cash value.

SUBCHAPTER D—AGENCY RESPONSIBILITIES

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

Subpart A—General Policies and Procedures

Sec.

Subpart B—Policies and Procedures Relating to Transportation

Sec.

Subpart C—Policies and Procedures Relating to Per Diem Expenses

Sec.

Subpart D—Policies and Procedures Relating to Miscellaneous Expenses

Sec.

Subpart E—Policies and Procedures Relating to Travel of an Employee With a Disability or Special Need

Sec.

Subpart F—Policies and Procedures for Emergency Travel of Employee Due to Illness or Injury

Sec.

Subpart G—Policies and Procedures Relating to Threatened Law Enforcement/ Investigative Employees

Authority: 5 U.S.C. 5707.

Subpart A—General Policies and Procedures

§ 301–70.1 How must we administer the authorization and payment of travel expenses?

You must limit the authorization and payment of travel expenses to travel that is necessary to accomplish your mission in the most economical and effective manner, in accordance with the rules stated throughout this chapter. Consideration should be given, but not limited, to budget constraints, adherence to travel policies, and reasonableness of expenses. You should always consider alternatives, including teleconferencing, prior to authorizing travel.

SUBPART B—POLICIES AND PROCEDURES RELATING TO TRANSPORTATION

§ 301–70.100 How must we administer the authorization and payment of transportation expenses?

You must:

(a) Limit authorization and payment of transportation expenses to those expenses that result in the greatest advantage to the Government;

(b) Ensure that travel is by the most expeditious means practicable.

§ 301–70.101 What factors must we consider in determining which method of transportation results in the greatest advantage to the Government?

In selecting a particular method of transportation you must consider:

(a) The total cost to the Government, including per diem, overtime, lost worktime, actual transportation cost, total distance of travel, number of points visited, the number of travelers and energy conservation. As stated in 5 U.S.C. 5733, ''travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel.''

(b) Travel by common carrier (air, rail, bus) is considered the most advantageous method to perform official travel. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would interfere with the performance of official business or impose an undue hardship upon the traveler, or when the total cost by common carrier exceeds the cost by another method of transportation. A determination that another method of transportation is more advantageous to the Government than common carrier will not be made on the basis of personal preference or inconvenience to the traveler.

§ 301–70.102 What governing policies must we establish for authorization and payment of transportation expenses?

You must establish policies and procedures governing:

(a) Who will determine what method of transportation is more advantageous to the Government;

(b) Who will approve any of the following:

(1) Use of premium class service under § 301–10.123, § 301–10.124, § 301–10.162 and § 301–10.183 of this chapter;

(2) Use of a special-reduced fare or reduced group or charter fare;

(3) Use of an extra-fare train service under § 301–10.164;

(4) Use of ship service;

(5) Use of a foreign ship;

(6) Use of a foreign air carrier;

(c) When you will:

(1) Require the use of a Government vehicle;

(2) Allow the use of a Government vehicle; and

(3) Prohibit the use of a Government vehicle;

(d) When you will consider use of a POV advantageous to the Government, such as travel to/from common carrier terminals, or transportation to a TDY location;

(e) Procedures for claiming POV reimbursement;

(f) When you will allow use of a special conveyance (e.g. commercially rented vehicles);

(g) What procedures an employee must follow when he/she travels by an indirect route or interrupts travel by a direct route; and

(h) For local transportation whether to reimburse the full amount of transportation costs or only the amount by which transportation costs exceed the employee's normal costs for transportation between:

(1) Office or duty point and another place of business;

(2) Places of business; or

(3) Residence and place of business other than office or duty point.

§ 301–70.103 In what circumstance may we authorize use of ship service?

Travel by ship is not generally regarded as advantageous. You must determine that the advantages accruing from the use of ocean transportation offset the higher costs associated with ship travel, i.e., per diem, transportation, and lost worktime.

§ 301–70.104 What factors should we consider in determining whether to require an employee to commit to the use of a Government automobile?

You should consider:

(a) The advantages of using a Government automobile. Such advantages may include, but are not limited to:

(1) Full utilization or availability of fleet vehicles;

(2) Lower cost;

(3) Official presence.

(b) The type of travel the employee performs. You should require such a commitment when an employee or group of employees requires the use of an automobile for official travel on a frequent or repetitive basis.

§ 301–70.105 May we prohibit an employee from using a POV on official travel?

No, but if the employee elects to use a POV instead of an alternative form of transportation you authorize, you must:

(a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation; and

(b) Charge leave for any duty hours that are missed as a result of travel by POV.

Subpart C—Policies and Procedures Relating to Per Diem Expenses

§ 301–70.200 What governing policies must we establish for authorization and payment of per diem expenses?

You must establish policies and procedures governing:

(a) Who will authorize a rest period;

(b) Circumstances allowing a rest period during prolonged travel (see § 301–11.20 for minimum standards);

(c) If, and in what instances, you will allow an employee to return to his/her official station on non-workdays;

(d) Who will determine if an employee will be allowed to return to his/her official station on a case by case basis.

(e) Who will determine in what instances you will pay a reduced per diem rate;

(f) Who will determine, and in what instances, actual expenses are appropriate in each individual case; and

(g) If you will define a radius broader than the official station in which per diem or actual expense will not be authorized.

Subpart D—Policies and Procedures Relating to Miscellaneous Expenses

§ 301–70.300 How should we administer the authorization and payment of miscellaneous expenses?

You should limit payment of miscellaneous expenses to only those expenses that are necessary and in the interest of the Government.

§ 301–70.301 What governing policies must we establish for payment of miscellaneous expenses?

You must establish policies and procedures governing:

(a) Who will determine when excess baggage is necessary for official travel;

(b) When you will pay for communications services, including whether you will pay for a telephone call to the employee's home or place where the employee's dependent children are;

(c) Who will determine if other miscellaneous expenses are appropriate for reimbursement in connection with official travel.

Subpart E—Policies and Procedures Relating to Travel of an Employee with a Disability or Special Need

§ 301–70.400 How should we authorize and administer the payment of additional travel expenses for an employee with a disability or special need?

You should authorize and administer the payment to reasonably accommodate employee(s) with disabilities in accordance with the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701–797(b) and 5 U.S.C. 3102 and Part 301–13 of this chapter. A employee with a special need should be treated the same as an employee with a disability. The additional travel expenses must be necessary to accommodate the employee's needs.

§ 301–70.401 What governing policies and procedures must we establish regarding travel of an employee with a disability or special need?

You must establish the policies and procedures governing:

(a) Who will determine if an employee has a disability or special need which requires accommodation, including when documentation is necessary under § § 301–10.123, 301–10.124, 301–10.162, and 301–10.183, and when a determination may be based on a clearly visible physical condition; and

(b) Who will determine how to reasonably accommodate the employee and what expenses you will pay.

Subpart F—Policies and Procedures for Emergency Travel of Employee Due to Illness or Injury

§ 301–70.500 What governing policies and procedures should we establish relating to emergency travel?

Each agency must determine:

(a) When you will authorize emergency travel under part 301–30;

(b) Who will determine if the employee's situation warrants payment for emergency travel expenses;

(c) When and by whom travel to an alternate location other than official station or point of interruption will be authorized; and

(d) Who will determine when and if the definition of family may be extended and to whom.

§ 301–70.501 Does per diem continue when an employee interrupts a travel assignment because of an incapacitating illness or injury?

Yes. Such an employee who takes leave of any kind will be allowed a per diem allowance not to exceed the maximum rates for the location where the interruption occurs. Per diem may be continued for a reasonable period, normally not to exceed 14 calendar days (including fractional days) for any one period of absence. However, per diem will not be paid if the employee is confined to a hospital or medical facility at the official duty station or medical facility which the employee would have selected for treatment if the illness or injury had occurred at the official station.

§ 301–70.502 What additional emergency expenses should we allow for?

When an employee discontinues a TDY assignment before its completion due to an incapacitating illness or injury, transportation and per diem expenses are allowed for return travel to the official station or to receive medical attention.

§ 301–70.503 When the employee is able to travel, should we continue the use of the existing travel authorization?

Not if the interrupted trip was authorized under a trip by trip authorization. If, when the employee's health has been restored, the agency decides that it is in the Government's interest to return the employee to the TDY location, such return is considered to be a new travel assignment at Government expense. An interrupted trip authorized under an open or limited open authorization may be continued without further authorization.

§ 301–70.504 May any travel costs be reimbursed if the employee travels to an alternate location for medical treatment?

Yes. When an employee, interrupts a TDY assignment because of an incapacitating illness or injury and takes leave of absence for travel to an alternate location to obtain medical services and returns to the TDY assignment, you may reimburse certain excess travel costs provided in this section. Specifically, you may reimburse the excess (if any) of actual costs of travel from the point of interruption to the alternate location and return to the TDY assignment, over the constructive costs of round-trip travel between the official station and the alternate location. The nearest hospital or medical facility capable of treating the employee's illness or injury will not, however, be considered an alternate location.

Note to § 301–70.504: An alternate location is a destination other than the employee's official station or the point of interruption.

§ 301–70.505 How do we define actual cost and constructive cost when an employee interrupts a travel assignment because of an incapacitating illness or injury?

(a) Actual cost of travel will be the transportation expenses incurred and en route per diem for the travel as actually performed from the point of interruption to the alternate location and from the alternate location to the TDY assignment. No per diem is allowed for time spent at the alternate location if confined to a medical facility.

(b) Constructive cost is the sum of transportation expenses the employee would reasonably have incurred for round-trip travel between the official station and the alternate location plus per diem calculated for the appropriate en route travel time.

§ 301–70.506 May we authorize per diem if an employee discontinues a TDY assignment because of a personal emergency situation?

Yes. Expenses of appropriate transportation and per diem while en route may be allowed, with the approval of an appropriate agency official, for return travel from the point of interruption to the official station.

§ 301–70.507 How do we handle reimbursement if the employee travels to an alternate location and returns to the TDY location because of a personal emergency situation?

You may reimburse certain excess travel costs (transportation and en route per diem) to the same extent as provided in § 301–70.501 for incapacitating illness or injury to the employee.

§ 301–70.508 What factors must we consider in expanding the definition of family for emergency travel purposes?

Agencies must consider on a case by case basis:

(a) The extent of the emergency;

(b) The employee's relationship to the individual involved in the emergency; and

(c) The degree of the employee's responsibility for the individual involved in the emergency.

Subpart G—Policies and Procedures Relating to Threatened Law Enforcement/Investigative Employees

§ 301–70.600 What governing policies and procedures must we establish related to threatened law enforcement/investigative employees?

You must establish policies and procedures governing:

(a) When you will pay transportation and subsistence expenses of threatened law enforcement/investigative employees, under part 301–31 of this chapter;

(b) Who will determine the degree and seriousness of threat in each individual case;

(c) Who will determine what protective action should be taken, including the location and duration of temporary lodging;

(d) Who will reevaluate the situation to determine whether protective action should be continued or discontinued and how often;

(e) What procedures must be followed to obtain authorization of transportation and subsistence expenses for threatened law enforcement/investigative employees; and

(f) What special procedures must an employee follow to claim expenses.

§ 301–70.601 What factors should we consider in determining whether to authorize payment of transportation and subsistence expenses for threatened law enforcement/investigative employees?

You should consider:

(a) *The degree and seriousness of the threat.* You should pay transportation and subsistence expenses only if a situation poses a legitimate serious threat to life.

(b) *The option of relocating the employee.* You should consider whether relocating the employee permanently would be advantageous given the specific nature of the threat, the continued disruption of the family, and the alternative costs of a change of official station.

§ 301–70.602 How often must we reevaluate the payment of transportation and subsistence expenses to a threatened law enforcement/investigative employee?

You must reevaluate the situation every 30 days based on the same factors you considered when you first authorized the payment of the expenses.

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

Subpart A—General

Subpart B—Travel Authorization

Subpart C—Travel Claims for Reimbursement

Subpart D—Accounting for Travel Advances

Authority: 5 U.S.C. 5707.

Subpart A—General

§ 301–71.1 What is the purpose of an agency travel accounting system?

To:

(a) Pay authorized and allowable travel expenses of employees;

(b) Provide standard data necessary for the management of official travel; and

(c) Ensure adequate accounting for all travel and transportation expenses for official travel.

§ 301–71.2 What are the standard data elements and when must they be captured on a travel accounting system?

The data elements are listed in appendix C of this chapter and must be on any travel claim form authorized for use by your employees.

§ 301–71.3 May we use electronic signatures on travel documents?

Yes, if you meet the security and privacy requirements established by the National Institute of Standards and Technology (NIST) for electronic data interchange.

Subpart B—Travel Authorization

§ 301–71.100 What is the purpose of the travel authorization process?

The purpose is to:

(a) Provide the employee information regarding what expenses you will pay;

(b) Provide travel service vendors with necessary documentation for the use of travel programs;

(c) Provide financial information necessary for budgetary planning; and

(d) Identify purpose of travel.

§ 301–71.101 What travel may we authorize?

You may authorize only travel which is necessary to accomplish the purposes of the Government effectively and economically. This must be communicated to any official who has the authority to authorize travel.

§ 301–71.102 May we issue a single authorization for a group of employees?

Yes. You may issue a single authorization for a group of employees when they are traveling together on a single trip. However, you must attach a list of all travelers to the authorization.

§ 301–71.103 What information must be included on all travel authorizations?

You must include:

(a) The name of the employee(s);

(b) The signature of the proper authorizing official;

(c) Purpose of travel;

(d) Any conditions of or limitations on that authorization;

(e) An estimate of the travel costs (for open authorizations it should include an estimate of the travel costs over the period covered); and

(f) A statement that the employee(s) is (are) authorized to travel.

§ 301–71.104 Who must sign a travel authorization?

Your agency head or an official to whom such authority has been delegated. This authority may be delegated to any person(s) who is aware of how the authorized travel will support the agency's mission, who is knowledgeable of the employee's travel plans and/or responsible for the travel funds paying for the travel involved.

§ 301–71.105 Must we issue a written or electronic travel authorization in advance of travel?

Yes, except when advance written or electronic authorization is not possible or practical and approval is in accordance with § § 301–2.1 and 301–2.5 for:

(a) Use of premium-class service on common carrier transportation;

(b) Use of a foreign air carrier;

(c) Use of reduced fares for group or charter arrangements;

(d) Use of cash to pay for common carrier transportation;

(e) Use of extra-fare train service;

(f) Travel by ship;

(g) Use of a rental car;

(h) Use of a Government aircraft;

(i) Payment of reduced rate per diem;

(j) Payment of actual expenses;

(k) Travel expenses related to emergency travel;

(l) Transportation expenses related to threatened law enforcement/investigative employees and members of their immediate families;

(m) Travel expenses related to travel to a foreign area, except as provided by agency mission;

(n) Acceptance of payment from a non-Federal source for travel expenses (see chapter 304 of this title); and

(o) Travel expenses related to attendance at a conference.

Note to § 301–71.105: You should establish procedures for travel situations where it is not practical or possible to issue a written authorization in advance, except for paragraphs (c), (i), (n), and (o), which always require written or electronic advance authorization.

§ 301–71.106 Who must sign a trip-by-trip authorization?

The appropriate official is determined as follows:

For	The appropriate official to sign a trip-by-trip authorization is
Use of cash to procure common carrier transportation.	An official at as low an administrative level as permitted by 41 CFR 101–203.2 to ensure adequate consideration and review of the circumstances.
Travel on a Government aircraft	Determined under 41 CFR 101–37.405.
Acceptance of payment from a non-Federal source for travel expenses.	An official at as low an administrative level as permitted by 41 CFR part 304 to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment.
Travel expenses related to attendance at a conference.	A senior agency official.
All other specific authorizations	An official who may issue the employee a general authorization.

§ 301–71.107 When authorizing travel, what factors must the authorizing official consider?

The following factors must be considered:

(a) The need for the travel;

(b) The use of travel substitutes (e.g., mail, teleconferencing, etc.);

(c) The most cost effective routing and means of accomplishing travel; and

(d) The employee's travel plans, including plans to take leave in conjunction with travel.

§ 301–71.108 What internal policies and procedures must we establish for travel authorization?

You must establish the following:

(a) The circumstances under which different types of travel authorization will be used, consistent with the guidelines in this subpart;

(b) Who will be authorized to sign travel authorizations; and

(c) What format you will use for travel authorizations.

Subpart C—Travel Claims for Reimbursement

§ 301–71.200 Who must review and sign travel claims?

The travel authorizing/approving official or his/her designee (e.g., supervisor of the traveler), must review and sign travel claims to confirm the authorized travel.

§ 301–71.201 What are the reviewing official's responsibilities?

The reviewing official must have full knowledge of the employee's activities. He/she must ensure:

(a) The claim is properly prepared in accordance with the pertinent regulations and agency procedures;

(b) A copy of authorization for travel is provided;

(c) The types of expenses claimed are authorized and allowable expenses;

(d) The amounts claimed are accurate; and

(e) The required receipts, statements, justifications, etc. are attached to the travel claim.

§ 301–71.202 May we pay a claim when an employee does not include a copy of the corresponding authorization?

Yes, as long as the travel claim was signed by the approving/authorizing official, except for the following, which require advance authorization:

(a) Use of reduced fares for group or charter arrangements;

(b) Payment of a reduced rate of per diem for subsistence expenses;

(c) Acceptance of payment from a non-Federal source for travel expenses; and

(d) Travel expenses related to attendance at a conference.

§ 301–71.203 Who is responsible for the validity of the travel claim?

The certifying officer assumes ultimate responsibility under 31 U.S.C.

3528 for the validity of the claim; however:

(a) The traveler must ensure all travel expenses are prudent and necessary and submit the expenses in the form of a proper claim;

(b) The authorizing/approving official shall review the completed claim to ensure that the claim is properly prepared in accordance with regulations and agency procedures prior to authorizing it for payment.

Note to § 301–71.203: You should consider limiting the levels of approval to the lowest level of management.

§ 301–71.204 When must we pay a travel claim?

You must pay a travel claim as soon as practical after submission of a proper travel claim.

§ 301–71.205 Under what circumstances may we disallow a claim for an expense?

If the employee:

(a) Does not properly itemize his/her expenses;

(b) Does not provide required receipts or other documentation to support the claim; or

(c) Claims an expense which is not authorized.

§ 301–71.206 What must we do if we disallow a travel claim?

You must:

(a) Pay the employee the amount of the travel claim which is not in dispute;

(b) Notify the employee that the claim was disallowed with a detailed explanation of why; and

(c) Tell the employee how to appeal the disallowance if he/she desires an appeal, and your process and schedule for deciding the appeal.

§ 301–71.207 What internal policies and procedures must we establish for travel reimbursement?

You must establish policies and procedures governing:

(a) Who are the proper officials to review, approve, and certify travel claims (including travel claims requiring special authorization);

(b) How an employee should submit a travel claim (including whether to use a standard form or an agency form and whether the form should be written or electronic);

(c) When you will exempt employees from the requirement for a receipt;

(d) Timeframes for employee to submit a claim (see § 301–52.7);

(e) Timeframe for agency to pay a claim (see § 301–71.204);

(f) Process for disallowing a claim; and

(g) Process for resolving a disallowed claim.

Subpart D—Accounting for Travel Advances

§ 301–71.300 What is the policy governing the use of travel advances?

You should minimize the use of cash travel advances. However, you should not require an employee to pay travel expenses using personal funds unless the employee has elected not to use alternative resources provided by the Government, such as a Government contractor-issued charge card.

§ 301–71.301 For how long may we issue a travel advance?

You may issue a travel advance for a reasonable period not to exceed 45 days.

§ 301–71.302 What data must we capture in our travel advance accounting system?

You must capture the following data:

(a) The name and social security number of each employee who has an advance;

(b) The amount of the advance;

(c) The date of issuance; and

(d) The date of reconciliation for unused portions of travel advances

§ 301–71.303 Are we responsible for ensuring the collection of outstanding travel advances?

Yes.

§ 301–71.304 When must an employee account for a travel advance?

An employee must account for an outstanding travel advance each time a travel claim is filed. If the employee receives a travel advance but determines that the related travel will not be performed, then the employee must inform you that the travel will not be performed and repay the advance at that time.

§ 301–71.305 Are there exceptions to collecting an advance at the time the employee files a travel claim?

Yes, when the employee is in a continuous travel status and

(a) You review each outstanding travel advance on a periodic basis (the period will be for a reasonable time of 45 days or less); and

(b) You determine the amount, if any, of the outstanding balance exceeds the amount of estimated travel expenses for the authorized period and collect the excess amount from the employee.

§ 301–71.306 How do we collect the amount of a travel advance in excess of the amount of travel expenses substantiated by the employee?

When the outstanding advance exceeds what you owe the employee, then the employee must submit cash or a check for the difference in accordance with your policy. Your failure to collect the amount in excess of substantiated expenses will cause a violation of the accountable plan rules contained in the Internal Revenue Code (title 26 of the United States Code).

§ 301–71.307 What should we do if the employee does not pay back a travel advance when the travel claim is filed?

You should take alternative steps to collect the debt including:

(a) Offset against the employee's salary, a retirement credit, or other amount owed the employee;

(b) Deduction from an amount the Government owes the employee; or

(c) Any other legal method of recovery.

§ 301–71.308 What internal policies and procedures must we establish governing travel advances?

Accounting for cash advances for travel, recovery, and reimbursement shall be in accordance with procedures prescribed by the General Accounting Office (see General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures).

PART 301–72—AGENCY RESPONSIBILITIES RELATED TO COMMON CARRIER TRANSPORTATION

Subpart A—Procurement of Common Carrier Transportation

Sec.

Subpart B—Accounting for Common Carrier Transportation

Sec.

Subpart C—Cash Payments for Procuring Common Carrier Transportation Services

Sec.

Authority: 5 U.S.C. 5707; 31 U.S.C. 3726; 40 U.S.C. 486.

Subpart A—Procurement of Common Carrier Transportation

§ 301–72.1 Why is common carrier presumed to be the most advantageous method of transportation?

Travel by common carrier is presumed to be the most advantageous method of transportation because it generally results in the most efficient, least costly, most expeditious means of transportation and the most efficient use of energy resources.

§ 301–72.2 May we utilize methods of transportation other than common carrier (e.g. POVs, chartered vehicles, etc.)?

Yes, but only when use of common carrier transportation:

(a) Would interfere with the performance of official business;

(b) Would impose an undue hardship upon the traveler; or

(c) When the total cost by common carrier would exceed the cost of the other method of transportation.

§ 301–72.3 What method of payment must we authorize for common carrier transportation?

You must authorize one or more of the following as appropriate:

(a) GSA's contractor issued individually billed charge card(s);

(b) Agency centrally billed or other established accounts;

(c) Cash payments (personal funds or travel advances in the form of travelers checks or authorized ATM cash withdrawals) when the cost of transportation is less than $100, under section 301–51.100 of this chapter (cash may or may not be accepted by the carrier for the purchase of city pair fares); or

(d) GTR(s) when no other option is available or feasible.

Subpart B—Accounting for Common Carrier Transportation

§ 301–72.100 What must my travel accounting system do in relation to common carrier transportation?

Your system must:

(a) Authorize the use of cash in accordance with § 301–51.100 or as otherwise required;

(b) Correlate travel data accumulated by your authorization and claims accounting systems with common carrier transportation documents and data for audit purposes;

(c) Identify unused tickets for refund;

(d) Collect unused, partially used, or downgraded/exchanged tickets, from travelers upon completion of travel;

(e) Track denied boarding compensation from employees;

(f) Identify and collect refunds due from carriers for overpayments, or unused, partially used, or downgraded/exchanged tickets; and

(g) Reconcile all centrally billed travel expenses (e.g. airline, lodging, car rentals, etc.) with travel authorizations and claims to assure that only authorized charges are paid.

§ 301–72.101 What information should we provide an employee before authorizing the use of common carrier transportation?

You should provide the employee:

(a) Notice that he/she is accountable for all tickets, GTRs and other transportation documents;

(b) Your procedures for the control and accounting of common carrier transportation documents, including the procedures for submitting unused, partially used, downgraded/exchanged tickets, refund receipts or ticket refund applications, and denied boarding compensation; and

(c) A credit/refund address so the carrier can credit/refund the agency for unused tickets (when the tickets have been issued using an agency centrally billed account or by GTR).

Subpart C—Cash Payments for Procuring Common Carrier Transportation Services

§ 301–72.200 Under what conditions may we authorize cash payments for procuring common carrier transportation services?

In accordance with § 301–51.100.

§ 301–72.201 What must we do if an employee uses cash in excess of the $100 limit to purchase common carrier transportation?

To justify the use of cash in excess of $100, both the agency and traveler must certify on the travel claim the necessity for such use. See 41 CFR 101–41.203–2.

§ 301–72.202 Who may approve cash payments in excess of the $100 limit?

You must ensure the delegation of authority for the authorization or approval of cash payments over the $100 limit is in accordance with 41 CFR 101–41.203–2.

§ 301–72.203 When may we limit traveler reimbursement for a cash payment?

If you determine that the cash payment was made under a non-emergency circumstance, reimbursement to the traveler must not exceed the cost which would have been properly chargeable to the Government had the traveler used a government provided payment resource, (e.g. individual contractor-issued travel charge card, centrally billed account, or GTR). However, an agency can determine to make full payment when circumstances warrant (e.g. invitational travel, infrequent travelers and interviewees).

§ 301–72.204 What must we do to minimize the need for a traveler to use cash to procure common carrier transportation services?

You must establish procedures to encourage travelers to use the GSA individual contractor-issued travel charge card(s), or your agency's centrally billed or other established account, or a GTR (when no other option is available or feasible).

Subpart D—Unused, Partially Used, Exchanged, Canceled, or Oversold Common Carrier Transportation Services

§ 301–72.300 What procedures must we establish to collect unused, partially used, and exchanged tickets?

You must establish administrative procedures providing:

(a) Written instructions explaining traveler liability for the value of tickets issued until all ticket coupons are used or properly accounted for on the travel voucher;

(b) Instructions for submitting payments received from carriers for failure to provide confirmed reserved space;

(c) The traveler with a ''bill charges to'' address, so that the traveler can provide this information to the carrier for returned or exchanged tickets.

(d) Procedures for promptly identifying any unused tickets, coupons, or other evidence of refund due the Government.

§ 301–72.301 How do we process unused, partially used, and exchanged tickets?

(a) *For unused or partially used tickets purchased with GTRs:* You must

obtain the unused or partially used ticket from the traveler, issue a form SF 1170 ''Redemption of Unused Ticket'' to the airline that issued the ticket, maintain a suspense file to monitor the airline refund, and record and deposit the airline refund upon receipt. See 41 CFR 101–41.210 for policies and procedures regarding the use of the SF 1170.

(b) *For unused or partially used tickets purchased under centrally billed accounts:* You must obtain the unused ticket from the traveler, return it to the issuing office that furnished the airline ticket, obtain a receipt indicating a credit is due, and confirm that the value of the unused ticket has been credited to the centrally billed account.

(c) *For exchanged tickets purchased with GTRs:* You must obtain the airline refund application or receipt from the traveler, maintain a suspense file to monitor the airline refund. For additional guidance see 41 CFR 101–41.210.

(d) *For exchanged tickets purchased under centrally billed accounts:* You must obtain the airline receipt from the traveler showing a credit is due the agency, and ensure that the unused portion of the exchanged ticket coupon is credited to the centrally billed account.

PART 301–73—TRAVEL PROGRAMS

Subpart A—General Rules

Sec.

Subpart B—Travel Management Services (TMS)

Sec.

Subpart C—Contract Passenger Transportation Services

Sec.

Subpart D—Travel Payment System

Sec.

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c).

Subpart A—General Rules

Note to § 301–73.101: For purposes of this subpart, GSA uses a ''we'' question when referring to an agency, and an ''I'' question when referring to the employee.

§ 301–73.1 What are the elements of a Federal travel management program?

They are:

(a) Travel management services, including electronic travel management services and commercial travel agents under contract to GSA or another Federal agency;

(b) Commercial passenger transportation services (e.g. airlines, rental cars, trains, and etc.);

(c) Travel payment system services such as contractor-issued individually billed cards, centrally billed accounts, travelers checks, and automated-teller-machine (ATM) services.

§ 301–73.2 What are our responsibilities to participate in a Federal travel management program?

You must:

(a) Ensure that you have internal policies and procedures in place to govern use of the program; and

(b) Designate an authorized representative to administer the program.

Subpart B—Travel Management Services (TMS)

§ 301–73.100 Should we use a travel management service?

Yes.

§ 301–73.101 What are the basic services that should be covered by a travel management system?

The travel management system selected should, as a minimum include:

(a) The ability to provide the following as appropriate to the agency's travel needs:

(1) Common carrier information (e.g., flight confirmation and seat assignment; compliance with the Fly America Act, governmentwide travel policies, and contract city-pair fares, electronic ticketing and ticket delivery);

(2) Lodging information (e.g., room availability and confirmation, compliance with Hotel/Motel Fire Safety Act, per diem rate acceptability);

(3) Car rental information (e.g. availability of Government rate and confirmation of reservations).

(b) Provide basic management information, such as:

(1) Number of reservations by type of service (common carrier, lodging, and car rental);

(2) Policy compliance and reasons for exceptions;

(3) Origin and destination points of common carrier use;

(4) Destination points for lodging accommodations;

(5) Number of lodging nights in approved accommodations;

(6) City or location where car rentals are obtained.

(7) Other tasks, e.g., reconciliation of charges on centrally billed accounts, processing ticket refunds.

Note to § 301–73.101: The government of the District of Columbia is excluded from collecting the data required by the Hotel/Motel Fire Safety Act, as amended.

§ 301–73.102 Must we require travelers to use a travel management system?

Yes, starting January 1, 2001, to implement the Hotel/Motel Fire Safety Act, as amended (see 5 U.S.C. 5707c). Until that time, you should encourage your travelers to use the travel management system selected by you for all common carrier, lodging, and car rental arrangements. Beginning January 1, 2001, you must require travelers to use the travel management system selected by you.

§ 301–73.103 Are there any exceptions to this requirement?

An agency head, or his/her designee, may exempt certain types of travel arrangements from the mandatory use of the travel management system. In certain situations, it may be impractical to make advance reservations, and therefore no reason exists to use a TMS.

Subpart C—Contract Passenger Transportation Services

§ 301–73.200 Must we require our employees to use GSA's contract passenger transportation services program?

Yes, if such services are available to your agency.

§ 301–73.201 What method of payment may be used for contract passenger transportation service?

GSA individual contractor-issued travel charge card(s), or your agency centrally billed or other established account, or a GTR (when no other option is available or feasible).

§ 301–73.202 Can contract fares be used for personal travel?

No.

SUBPART D—TRAVEL PAYMENT SYSTEM

§ 301–73.300 What is a travel payment system?

A system to facilitate the payment of official travel and transportation expenses which includes, but is not limited to:

(a) Issuance and maintenance of contractor-issued individually billed charge cards;

(b) Establishment of centrally billed accounts for the purchase of travel and transportation services;

(c) Issuance of travelers checks; and

(d) Provision of automated-teller-machine (ATM) services worldwide.

§ 301–73.301 How do we obtain travel payment system services?

You may participate in GSA's or another Federal agency's travel payment system services program or you may contract directly with a travel payment system service if your agency has contracting authority and you are not a mandatory user of GSA's charge card program.

Note to § 301–73.301: Under the new GSA charge card program effective November 30, 1998, it will be your responsibility to select the vendor that will be most beneficial to your agency's travel and transportation needs.

PART 301–74—CONFERENCE PLANNING

Sec.

Authority: 5 U.S.C. 5707.

§ 301–74.1 What is a conference?

A meeting, retreat, seminar, symposium or event that involves attendee travel. The term also applies to training activities that are considered to be conferences under 5 CFR 410.404.

§ 301–74.2 What are ''conference costs''?

Conference costs are all costs paid by the government for a conference, whether paid directly by agencies or reimbursed by agencies to travelers or others associated with the conference, e.g., speakers, contractors, etc. Such costs include, but are not limited to: travel to and from the conference, ground transportation, lodging, meals and incidental costs, meeting room and audiovisual costs, registration fees, speaker fees, other conference-related administrative fees, and the cost of employees' time spent at the conference and traveling to and from the conference.

§ 301–74.3 What are ''conference attendees' travel costs''?

''Conference attendees' travel costs'' are authorized transportation and per diem expenses incurred in attending a conference at Government expense.

§ 301–74.4 What are ''conference attendees' time costs''?

''Conference attendees' time costs'' are the costs of employee's time spent at a conference (including en route travel time during normal duty hours).

§ 301–74.5 Who must authorize employee attendance at conferences and the Government sponsorship or funding, in whole or in part, of conferences?

A senior agency official, other than attendee.

§ 301–74.6 Are there any requirements for sponsoring or funding a conference at a place of public accommodation?

Yes. When you sponsor or fund, in whole or in part, a conference at a place of public accommodation in the U.S., you must use a FEMA approved accommodation, except as provided in § 301–74.7 of this subpart. This provision also applies:

(a) To the government of the District of Columbia only when it expends Federal funds for a conference; and

(b) To a non Federal entity to which Government funds are provided for the conference.

§ 301–74.7 May we waive the requirement?

Yes, if the head of your agency makes a written determination on an individual case basis that waiver of the requirement to use FEMA approved accommodation is necessary in the public interest for a particular event. Your agency head may delegate this waiver authority to a senior agency official who is given all authority with respect to conferences sponsored or funded, in whole or in part, by your agency.

§ 301–74.8 What must be included in any advertisement or application form for conference attendance?

Any advertisement or application for attendance at the conference must include notice that agencies are prohibited from using a non-FEMA approved place of public accommodation for conferences. In addition, any executive agency as defined in 5 U.S.C. 105 shall notify all non-federal entities to which it provides federal funds of this prohibition.

§ 301–74.9 What policies must we establish governing the selection of a conference site?

You must establish policies that will:

(a) Minimize conference administrative costs, conference attendees' travel costs, and conference attendees' time costs; and

(b) Maximize the use of Government-owned or Government provided conference facilities as much as possible.

(c) Identify opportunities to save costs in selecting a particular conference site (e.g., through the availability of attractive and competitive rates during the off-season at a site having seasonal rates).

§ 301–74.10 What records must we maintain to document the selection of a conference site?

For each conference you sponsor or fund, in whole or in part, that involves travel by 30 or more employees, you must maintain a record of the cost of each alternative conference site. You must make these records available for inspection by your Office of the Inspector General or other interested parties.

§ 301–74.11 What special rules apply when we conduct a conference in the District of Columbia?

(a) In addition to the general rules provided in § 301–74.6, the following special rules apply:

(1) You may not directly procure lodging facilities in the District of Columbia without specific authorization and appropriation from Congress (see 40 U.S.C. 34); and

(2) Any short-term conference meeting space you obtain in the District of Columbia must be procured under 41 CFR 101–17.101–4.

(b) The provisions of paragraph (a) of this section do not prohibit payment of

per diem to an employee authorized to obtain lodging in the District of Columbia while performing official business travel.

§ 301–74.12 What policies and procedures must we establish to govern the selection of conference attendees?

You must establish polices that reduce the overall cost of attending a conference. The policies and procedures must:

(a) Limit your agency's representation to the minimum number of attendees necessary to accomplish your agency's mission; and

(b) Provide for the consideration of travel expenses when selecting attendees.

§ 301–74.13 May we include conference administrative costs in an employee's per diem allowance payment for attendance at a conference?

No. Per diem is intended only to reimburse the attendee's subsistence expenses. You must pay conference administrative costs separately.

PART 301–75—PRE-EMPLOYMENT INTERVIEW TRAVEL

Subpart A—General Rules

Sec.

Subpart B—Travel Expenses

Sec.

Subpart C—Obtaining Travel Services and Claiming Reimbursement

Sec.

Authority: 5 U.S.C. 5707.

Subpart A—General Rules

Sec.

§ 301–75.1 What is the purpose of the allowance for pre-employment interview travel expenses?

To help you recruit highly qualified individuals.

§ 301–75.2 May we pay pre-employment interview travel expenses?

Yes, if you determine it is in the best interest of the Government to do so. However, pre-employment travel expenses may not be authorized to offset or defray other expenses not allowable under this subpart.

§ 301–75.3 What governing policies and procedures must we establish related to pre-employment interview travel?

You must establish policies and procedures governing:

(a) When you will pay pre-employment interview travel expenses, including the criteria for determining which individuals or positions qualify for payment of such expenses;

(b) Who will determine, in each individual case, that a person qualifies for pre-employment interview travel expenses; and

(c) Who will determine what expenses you will pay for each individual interviewee.

§ 301–75.4 What other responsibilities do we have for pre-employment interview travel?

You must:

(a) Provide your interviewees with a list of FEMA approved accommodations in the vicinity of the interview, and encourage them to stay in an approved accommodation;

(b) Inform the interviewee that he or she is responsible for excess cost and any additional expenses that he or she incurs for personal preference or convenience;

(c) Inform the interviewee that the Government will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business;

(d) Assist the interviewee in preparing the travel claim;

(e) Provide the interviewee with instructions on how to submit the claim; and

(f) Inform the interviewee that he or she may subject himself or herself to criminal penalties if he or she knowingly presents a false, fictitious, or fraudulent travel claim 18 U.S.C. 287 and 1001.

Subpart B—Travel Expenses

§ 301–75.100 Must we pay all of the interviewee's pre-employment interview travel expenses?

If you decide to pay the interviewee per diem or common carrier transportation costs, you must pay the full amount of such cost to which the interviewee would be entitled if the interviewee were a Government employee traveling on official business.

§ 301–75.101 What pre-employment interview travel expenses may we pay?

You may pay the following expenses:

(a) Transportation expenses as provided in part 301–10 of this chapter;

(b) Per diem expenses as provided in part 301–11 of this chapter;

(c) Miscellaneous expenses as provided in part 301–12 of this chapter; and

(d) Travel expenses of an individual with a disability or special need as provided in part 301–13 of this chapter.

§ 301–75.102 What pre-employment interview travel expenses are not payable?

You may not pay expenses for:

(a) Use of communication services for purposes other than communication directly related to travel arrangement for the Government interview.

(b) Hire of a room at a hotel or other place to transact official business.

§ 301–75.103 What are our responsibilities when we authorize an interviewee to use common carrier transportation to perform pre-employment interview travel?

You must provide the interviewee with one of the following: 1(a) A common carrier ticket;

(b) A GTR; or

(c) A point of contact with your travel management center to arrange the common carrier transportation. In this instance, you must notify the travel management center that the interviewee is authorized to receive a ticket for the trip;

(d) Written instructions explaining your procedures and the liability of the interviewee for controlling and accounting for passenger transportation documents, if common carrier transportation is required;

(e) A credit/refund address for any common carrier transportation provided for unused government furnished tickets.

Subpart C—Obtaining Travel Services and Claiming Reimbursement

§ 301–75.200 How will we pay for pre-employment interviewee travel expenses?

For	You will
Common carrier transportation expenses other than local transportation.	Bill the expenses to a centrally billed or other agency established account or provide the traveler with a GTR when no other option is available or feasible.
Other expenses	Require payment by the interviewee and reimburse the interviewee for allowable travel expenses upon submission and approval of his or her travel claim.

§ 301–75.201 May we allow the interviewee to use individual Government contractor-issued charge cards for pre-employment interview travel?

No.

§ 301–75.202 What must we do if the interviewee exchanges the ticket he or she has been issued?

If	You will inform the traveler
The new ticket is more expensive than the ticket you provided.	That he or she must pay the difference using personal funds and he or she will not receive reimbursement for the extra amount.
The new ticket is less expensive than the ticket you provided.	Provide the interviewee with a credit/refund address by attaching a copy of the GTR, or some other document containing this information, to either the ticket or the travel authorization as provided in 41 CFR 101–41.210.

§ 301–75.203 May we provide the interviewee with a travel advance?

No.

§ 301–75.204 May we use Government contract issued travelers checks to pay for the interviewee's travel expenses?

No.

§ 301–75.205 Is the interviewee required to submit a travel claim to us?

No. Only if the interviewee wants to be reimbursed, then he or she must submit a travel claim in accordance with your agency procedures in order to receive reimbursement for pre-employment interview travel expense.

3. Appendix C and D are added to Chapter 301 to read as follows:

Appendix C to Chapter 301—Standard Data Elements for Federal Travel [Traveler Identification]

Group name	Data elements	Description
Travel Authorization	Authorization Number	Assigned by the appropriate office.
Employee Name	First Name, Middle Initial, Last Name.	Agency guidelines may specify the order, e.g., last name first.
Employee Identification	Employee Number	Must use a number, e.g., SSN, vendor number, or other number that identifies the employee.
Travel Purpose Identifier	Site visit	
	Information meeting	
	Training attendance	
	Speech or presentation	
	Conference attendance	
	Relocation	Same as change of official station.
	Entitlement travel.	
Travel Period	Start Date, End Date	Month, Day, Year according to agency guidelines.
Travel Type	CONUS/Domestic	Travel within Continental United States.
	OCONUS/Domestic	Travel within noncontiguous United States.
	Foreign	Travel to other countries.
Leave Indicator	Annual, Sick, Other	Identifies leave type as the reason for an interruption of per diem entitlement.
Official Duty Station	City, State, Zip	Either the corporate limits of city/town or the reservation, station, established area where stationed.
Residence City,	State, Zip	The geographical location where employee resides, if different from official duty station.
Payment Method	EFT	Direct deposit via electronic funds transfer.
	Treasury Check	
	Imprest Fund	
Mailing Address	Street Address, City, State, Zip	The location designated by the traveler based on agency guidelines.

STANDARD DATA ELEMENTS FOR FEDERAL TRAVEL

[Commercial Transportation Information]

Group name	Data elements	Description
Transportation Payment		Method employee used to purchase transportation tickets.
Method Indicator	GTR	U. S. Government Transportation Request.
	Central Billing Account	A Contractor centrally billed account.
	Government Charge Card	In accordance with and as provided by agency guidelines.
	Cash	
Transportation Payment Identification Number.	Payment ID Number	A number that identifies the payment for the transportation tickets, according to agency guidelines, e.g., GTR number, Govt. credit card number.
Transportation Method Indicator	Air (Premium Class)	Common carrier used as transportation to TDY location.
	Air (Non-premium Class)	
	Non-contract Air, Train, Other	
Local Transportation Indicator	POV, Car rental, Taxi, Other	Identifies local transportation used while on TDY.

TRAVEL EXPENSE INFORMATION

[Standard Data Elements for Federal Travel]

Group name	Data elements	Description
Per Diem	Total Number of Days	The number of days traveler claims to be on per diem status, for each official travel location.
	Total Amount Claimed	The amount of money traveler claims as per diem expense.
	Lodging, Meals & Incidentals.	
Travel Advance	Advance Outstanding	The amount of travel advance outstanding, when the employee files the travel claim.
	Remaining Balance	The amount of the travel advance that remains outstanding.
Subsistence	Actual Days	Total number of days the employee charged actual subsistence expenses.
		The number of days must be expressed as a whole number.
	Total Actual Amount	Total amount of actual subsistence expenses claimed as authorized. Actual subsistence rate, per day, may not exceed the maximum subsistence expense rate established for official travel by the Federal Travel Regulation.
Transportation Method Cost	Air (Premium Class)	The amount of money the transportation actually cost the traveler, entered according to method of transportation.
	Air (Non-premium class) Non-contract Air, Train.	
	Other	Bus or other form of transportation.
Local Transportation	POV mileage	Total number of miles driven in POV.
	POV mileage expense	Total amount claimed as authorized based on mileage rate. Different mileage rates apply based on type and use of the POC.
	Car rental, Taxis, Other.	
Constructive cost	Constructive cost	The difference between the amount authorized to spend versus the amount claimed.
Reclaim	Reclaim amount	An amount of money previously denied as reimbursement for which additional justification is now provided.
Total Claim	Total claim	The sum of the amount of money claimed for per diem, actual subsistence, mileage, transportation method cost, and other expenses.

STANDARD DATA ELEMENTS FOR FEDERAL TRAVEL

[Accounting & Certification]

Group name	Data elements	Description
Accounting Classification	Accounting Code	Agency accounting code.
Non-Federal Source Indicator	Per Diem, Subsistence, Transportation.	Indicates the type of travel expense(s) paid, in part or totally, by a non-Federal source.
Non-Federal Source Payment Method.	Check, EFT, Payment ''in-kind''	Total payment provided by non-Federal source according to method of payment.
Signature/Date Fields	Claimant Signature	Traveler's signature, or digital representation. The signature signifies the traveler read the ''fraudulent claim/responsibility'' statement.
	Date	Date traveler signed ''fraudulent claim/responsibility'' statement.
	Claimant Signature	Traveler's signature, or digital representation. The signature signifies the traveler read the ''Privacy Act'' statement.
	Date	Date traveler signed ''Privacy Act'' statement.
	Approving Officer Signature	Approving Officer's signature, or digital representation. The signature signifies the travel claim is approved for payment based on authorized travel.
	Date	Date Approving Officer approved and signed the travel claim.

STANDARD DATA ELEMENTS FOR FEDERAL TRAVEL—Continued

[Accounting & Certification]

Group name	Data elements	Description
	Certifying Officer Signature	Certifying Officer's signature, or digital representation. The signature signifies the travel claim is certified correct and proper for payment.
	Date	Date Certifying Officer signed the travel claim.

Note: Agencies must ensure that a purpose code is captured for those individuals traveling under unlimited open authorizations.

APPENDIX D TO CHAPTER 301—GLOSSARY OF ACRONYMS

ATM: Automated Teller Machine
CFR: Code of Federal Regulations
CMTR: Combined Marginal Tax Rate
CONUS: Continental United States
CSRS: Civil Service Retirement System
DOD: Department of Defense
DOJ: Department of Justice
DSSR: Department of State Standardized Regulations
FAM: Foreign Affairs Manual
FEMA: Federal Emergency Management Agency
FERS: Federal Employees Retirement System
FHA: Federal Housing Administration
FOB: Free On Board
FTR: Federal Travel Regulation
FTS: Federal Telecommunications System
GAO: General Accounting Office
GBL: Government Bill of Lading
GEBAT: Government Excess Baggage Authorization Ticket
GOCO: Government Owned Contractor Operated
GPO: Government Printing Office
GSA: General Services Administration
GTR: Government Transportation Request
IRC: Internal Revenue Code
IRS: Internal Revenue Service
JFTR: Joint Federal Travel Regulations
M&IE: Meals and Incidental Expenses
M&O: Management and Operating
MOU: Memorandum of Understanding
MTR: Marginal Tax Rate
NIST: National Institute of Standards and Technology
OCONUS: Outside the Continental United States
OGE: Office of Government Ethics
OMB: Office of Management and Budget
PCS: Permanent Change of Station
PDS: Permanent Duty Station
PIN: Personal Identification Number
POV: Privately Owned Vehicle
PTA: Prepaid Ticket Advice
PDTATAC: Per Diem, Travel and Transportation Allowance Committee
Q&A: Question and Answer
RIT: Relocation Income Tax
SES: Senior Executive Service
TCS: Temporary Change of Station
TDY: Temporary Duty
TMC: Travel Management Center
TMS: Travel Management System
TQSE: Temporary Quarters Subsistence Expenses
U.S.C.: United States Code
VA: Department of Veterans Affairs
WAE: When Actually Employed
WTA: Withholding Tax Allowance

Dated: March 19, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–7725 Filed 3–31–98; 8:45 am]

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Federal Register

Wednesday
April 1, 1998

Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 646

Indian and Native American Welfare-to-Work Grants Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 646

RIN 1205–AB16

Indian and Native American Welfare-To-Work Grants Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor hereby publishes this Interim Final Rule to implement the provisions of the Indian and Native American Welfare-to-Work Program (hereinafter referred to as ''INA WtW'') authorized under section 412(a)(3) of the Social Security Act (''the Act''), as amended by Public Law 104–193, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and by title V, section 5001(c) of Public Law 105–33, The Balanced Budget Act of 1997. The statute authorizes the Department of Labor to provide INA WtW grants to tribes for transitional employment assistance to move hard-to-employ welfare recipients with significant employment barriers into unsubsidized jobs offering long-term employment opportunities. These grants will provide many welfare recipients with the job placement services, transitional employment, and job retention and supportive services they need to make the successful progression into long-term unsubsidized employment and economic self-sufficiency.

DATES: This rule will be effective on April 1, 1998. However, affected parties do not have to comply with the information collection requirements (ICR) in § 646.705 (reporting requirements for the INA WtW program) until DOL publishes in the **Federal Register** the Control Number(s) assigned by the Office of Management and Budget (OMB). Publication of the Control Number(s) notifies the public that OMB has approved this ICR under the Paperwork Reduction Act of 1995.

Written or electronic comments are invited on this Interim Final Rule. All written or electronic comments submitted on or before June 1, 1998, will be considered. Appropriate changes to the regulations will be made when the Final Rule is published which adopts this interim rule as final.

ADDRESSES: Written comments shall be submitted to the Assistant Secretary for Employment and Training, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue NW., Washington, D.C. 20210, Attention: Anna W. Goddard, Director, Office of National Programs. Commenters wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested. Commenters may transmit written comments of ten (10) or fewer pages by facsimile to (202) 219–6338, and then must submit these comments in writing to the Assistant Secretary at the address cited above.

Comments received will be available for public inspection and copying during normal business hours at the Office of National Programs, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N–4641, Washington, D.C. 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219–5500 (VOICE) or (202) 326–2577 (TDD).

Copies of this Interim Final Rule are available on computer disk or in a large-type edition which may be obtained at the above address. They are also available at our web site at www.wdsc.org/dinap. Any comments on this Interim Final Rule may also be addressed to that web site.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue N.W., Washington, D.C. 20210. Telephone: (202) 219–8502 ext 119(VOICE) or (202) 326–2577(TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

(1) Background

On August 5, 1997, the President signed the Balanced Budget Act of 1997. This legislation amended certain Temporary Assistance to Needy Families (TANF) provisions of the Social Security Act and authorized the Secretary of Labor to provide Welfare-to-Work (WtW) grants to States, local communities, and Indian tribes for transitional employment assistance to move hard to employ TANF recipients into unsubsidized jobs and economic self-sufficiency.

The transitional nature of the WtW program is indicated clearly by section 403(a)(5)(C)(vii) of the Act, which provides that grant funds not expended within 3 years after the date the funds are provided must be remitted to the Secretary of Labor. Pursuant to Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated responsibility to carry out WtW policies, programs, and activities for the Secretary of Labor.

The regulatory text of this Interim Final Rule adheres closely to the pertinent INA WtW statutory language and was written in coordination with the existing regulatory provisions of section 401 of the Job Training Partnership Act (JTPA), the primary employment and training program operated by tribes and Alaska Native entities. The Chronology Section of the Preamble addresses the limited instances in which regulations implementing the INA WtW statute reflect policy decisions by ETA's Division of Indian and Native American Programs (DINAP), which will have day-to-day programmatic responsibility for the INA WtW Program. Interested parties who believe that more explanation of the regulatory text is needed are encouraged to submit their suggestions during the 60-day comment period.

(2) Chronology

The Department's strategy for program implementation places as little additional administrative burden on the service providers and clients as possible. In order to do so in an effective manner, the Department consulted with individual tribal representatives to obtain their input concerning various aspects of the INA WtW program implementation process. Moreover, this rulemaking exercise was undertaken with certain assumptions and preferences in place. These assumptions and preferences are as follows:

(1) The first and most important principle was one of simplicity—make the rules and regulations as easy to read and understand as possible so that valuable staff time can be spent in providing client services;

(2) Where possible, the Act has been cross-referenced rather than paraphrased—a full-text ''annotated version'' with actual Act language will be published later for reference and staff training purposes;

(3) We decided to define only those elements such as ''poor work history'', ''poor reading and mathematics skills'', and ''substantial services'' which are undefined in the Act, and which must be further defined for proper program operation;

(4) We also decided to keep details in these regulations to a minimum. We merely refer to DOL-implemented

policies and procedures in the most general of terms, or refer to future administrative issuances, such as for closeout;

(5) In recognition of tribal self-determination and the government-to-government relationship, the issues raised and the recommendations made by those individual tribal members attending a two-day meeting on August 27–28, 1997 in Washington, D.C. have been considered;

(6) Realizing that there were relatively few tribes with approved TANF plans in August of 1997, it was agreed that INA WtW grant recipients will need to establish working relationships with State welfare agencies to get referrals and to obtain AFDC/TANF data for future funding formula allotments;

(7) We have endeavored to make INA WtW implementation procedures as simple as possible. They conform to existing DOL/ETA grant processing practices to the maximum extent allowable by law; and

(8) We have decided, given the precedents set under the JTPA program and the recognized difficulties facing tribes attempting to start-up and operate INA WtW programs, that it would be more efficient and effective to allow INA WtW grantees to spend up to twenty percent (20%) of their grant funds on administrative costs. Therefore, the Secretary has exercised the waiver authority provided under section 412(a)(3)(C)(ii) to modify the fifteen percent (15%) administrative cost limit provided by section 404(b)(1) of the Act.

In formulating these regulations, we have consistently applied the above-stated principles in consultation with our tribal partners.

(3) Characteristics Associated With Long-Term Welfare Dependence

Section 403(a)(5)(C)(iii)(I) of the Act states that an individual must have characteristics associated with long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. We are interpreting ''associated with'' to include characteristics ''predictive of'' long-term welfare dependence. In order to facilitate coordination at the grantee level, we will not further define the characteristics associated with long-term welfare dependence. It is likely that the TANF assessment may identify the above-noted characteristics, and we do not want to require further assessment for the purposes of establishing eligibility where it is not needed. Moreover, these regulations interpret the statutory phrase ''such as'' to mean that, in addition to the characteristics listed in the statute, the INA WtW grantee may designate other characteristics associated with, or predictive of, long-term welfare dependence, including having a disability. In order to provide the grantees with flexibility to design their INA WtW programs to support the goals of overall assistance for welfare recipients, we are not imposing any further restrictions in this area. However, INA WtW grantees are required to formulate their own definition of ''long-term welfare dependence'' and describe that definition to the Department in their FY 1999 INA WtW plans.

(4) Funding Formula

The work group which met in Washington in August, 1997, agreed that formula funding is desirable because it is the most objective method of funding allocation, and because formula-funded employment programs are eligible for inclusion in the consolidation demonstration authorized in Public Law 102–477. In FY 1998, two funding formulas will be used. The first formula, for the TANF and Native Employment Works (NEW) tribes, will be based on welfare caseload data; the second formula, for the ''substantial services'' tribes, will be based on FY 1990 Census data.

The work group recommended one FY 1999 funding formula, based on AFDC/TANF data, to allocate second-year funds to FY 1998 INA WtW grantees. As a result, the ''substantial services'' tribes receiving FY 1998 INA WtW grants will be required to obtain State-negotiated AFDC/TANF counts for their WtW service areas prior to the formula allocation of FY 1999 funds. In addition, tribes or consortia who qualify under the ''substantial services'' criteria for the first time in FY 1999 will have their INA WtW grant allotments based on 1990 Census data, unless they submit State-negotiated AFDC/TANF counts with their grant applications.

Whether funds are distributed using AFDC/TANF data or 1990 Census data, each tribe will receive a formula allocation that represents its share of the national total. For example, if a tribe has .0002315 percent of the total Indian/Native American adults in poverty on reservations nationwide, then that tribe receives .0002315 percent of the total available resources for the funding period.

Regulatory Impact

This Interim Final Rule, among other things, implements statutory requirements under section 412(a)(3) of the Social Security Act, as amended by title V of the Balanced Budget Act of 1997, Public Law 105–33. While these regulations have been crafted to conform to statutory amendments to the Personal Responsibility and Work Opportunities Reconciliation Act (Public Law 104–193) and the additional requirements imposed by Public Law 105–33, the INA WtW program essentially will use the delivery system already in place for the TANF program and the NEW (formerly the Job Opportunities and Basic Skills Training, or ''JOBS'') program. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12866, 58 FR 51735, October 4, 1993. However, the Department finds that this Interim Final Rule raises novel policy issues and thus constitutes a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

The Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that, pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), this Interim Final Rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by this Interim Final Rule.

Unfunded Mandates

This Interim Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of the UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule which includes any Federal mandate which may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of the UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

ETA has determined that the INA WtW Interim Final Rule will not require the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100

million in any one year. Further, any expenditures made to obtain or operate grants would be voluntary. Accordingly, the Agency has not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Effective Date and Absence of Notice and Comment

The Employment and Training Administration has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that the statutory mandate to promulgate regulations expeditiously constitutes good cause for waiving notice and comment proceedings. In addition, the Agency has determined, pursuant to 5 U.S.C. 553(d)(3), that the INA WtW statutory mandate provides good cause for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. The short statutory duration of the INA WtW program underscores the importance of beginning the disbursement of INA WtW funds at the earliest possible date. Accordingly, the issuance of a proposed rule, which would delay the effective date of a final rule for 30 days, would be contrary to the public interest. This Interim Final Rule sets a comment period to elicit any concerns raised by the Rule. ETA has limited the comment period to 60 days so that input is received in time for the Agency to develop any revisions and promulgate a final rule while the INA WtW program remains in the early stages of operation.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.254, ''Indian and Native American Welfare-to-Work Grant Program''.

Paperwork Reduction Act

This Interim Final Rule utilizes existing collection of information requirements imposed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, by the Temporary Assistance to Needy Families (TANF) program and by the Native Employment Works (NEW) (formerly the JOBS) program. The only new requirements being imposed on potential INA WtW grant recipients which are subject to the Paperwork Reduction Act involve the submission of an INA WtW plan and, for those tribal entities not operating a TANF or NEW program, the submission of a pre-application to determine their eligibility to receive INA WtW grant funds under the ''substantial services'' criteria. Sections 646.215, 646.300, 646.315, 646.325, 646.700, 646.705, 646.710, 646.800, and 646.915 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department has submitted a copy of these sections to OMB for its review [44 U.S.C. 3507(d)]. For those tribes approved to receive INA WtW grants, separate quarterly and annual reports will be required covering program participation and financial expenditures, respectively. This INA WtW reporting package has been submitted for OMB clearance.

List of Subjects in 20 CFR Part 646

Grant programs, Native Americans, Labor, Employment programs, Welfare-to-Work programs.

Interim Final Rule

For the reasons set forth in the Preamble, 20 CFR Chapter V is amended by adding part 646 to read as follows:

Signed at Washington, DC this 26th day of March, 1998.

Raymond J. Uhalde,

Acting Assistant Secretary.

Alexis M. Herman,

Secretary of Labor.

PART 646—PROVISIONS GOVERNING THE INDIAN AND NATIVE AMERICAN WELFARE-TO-WORK GRANT PROGRAM

Subpart A—Introduction to Indian and Native American Welfare to Work Programs

Sec.

Subpart B—Eligibility to Receive INA WtW Grants

Subpart C—Application for INA WtW Grants

Subpart D—Participant Eligibility, Limits, and Allowable Activities

Subpart E—Tribal Service Areas and Populations

Authority: 42 U.S.C. 612(a)(3)(B)(iii), unless otherwise noted.

PART 646—PROVISIONS GOVERNING THE INDIAN AND NATIVE AMERICAN WELFARE-TO-WORK PROGRAM

Subpart A—Introduction to Indian and Native American Welfare to Work Programs

§ 646.100 What is the purpose of the Indian and Native American Welfare-to-Work (INA WtW) Program?

The INA WtW Program, authorized by title V, section 5001(c) of the Balanced Budget Act of 1997, is a program to complement the Indian provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA—commonly called the ''Welfare Reform Act'') [Pub. L. 104–193, 42 U.S.C. 601 *et seq.*] by providing additional funds to eligible federally-recognized Indian tribes to facilitate the transition of public assistance recipients from welfare dependency to self-sufficiency by helping recipients to obtain lasting unsubsidized employment. The INA WtW Program is authorized by title V, section 5001(c) of the Balanced Budget Act of 1997 (Pub. L. 105–33), which amended title IV-A of the Social Security Act by adding section 412(a)(3) [42 U.S.C. 612(a)(3)].

§ 646.105 What are the purposes of these regulations?

These regulations are designed to provide INA WtW program operators with the basic rules and guidelines needed to operate a Welfare-to-Work program which helps Native American public assistance recipients secure unsubsidized employment. Where applicable, these regulations also establish definitions and parameters not defined in the amended Social Security Act. These regulations cross-reference title V of the Balanced Budget Act of 1997, title IV of the amended Social Security Act (42 U.S.C. 601 *et seq.*), and appropriate sections of the ''Welfare Reform Act''.

§ 646.110 What are the administrative requirements for the INA WtW Program?

Tribes and tribal consortia who are participating in the INA WtW Program shall follow the common rule, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, which is codified in DOL regulations at 29 CFR part 97. Alaska Native regional nonprofit corporations shall follow OMB Circular A–110, as codified by the Department at 29 CFR part 95. General principles of cost allowability may be found in OMB Circulars A–87 (for tribes) and A–122 (for nonprofits). The audit requirements of OMB Circular A–133 [issued in the **Federal Register** on June 30, 1997] shall apply to both tribes and nonprofits.

§ 646.115 What are the definitions which apply uniquely to the INA WtW program?

The definition of ''substantial services'' is only applicable to Indian and Native American Welfare-to-Work programs (see § 646.215 of this part).

Subpart B—Eligibility to Receive INA WtW Grants

§ 646.200 What entities are eligible to receive INA WtW grants?

The three categories of Federally-recognized Indian tribes or Alaska Native regional nonprofit corporations eligible to receive INA WtW funds, as described at section 412(a)(3)(B) of the amended Social Security Act, are those which: Operate a tribal TANF program; operate a NEW program; or operate an employment program funded through other sources under which substantial services are provided to recipients of assistance under a program funded under Part A of title IV of the Social Security Act. The term ''substantial services'' is defined at § 646.215 of this part.

§ 646.205 What entities are eligible to receive INA WtW grants in Alaska?

The twelve Alaska Native regional nonprofit corporations, along with the Metlakatla Indian Community of the Annette Islands Reserve, are the only entities in Alaska eligible to apply for INA WtW grants. These nonprofit corporations are listed in section 419(4)(B) of the amended Social Security Act [42 U.S.C. 619(4)(B)].

§ 646.210 Can a consortium composed of tribes which do not operate TANF or NEW programs still receive an INA WtW grant?

Yes, although the consortium must collectively meet the ''substantial services'' criteria outlined at § 646.215 below. Refer to subpart C of this part for more information on consortium requirements.

§ 646.215 How does a tribe document that it is currently providing ''substantial services'' to public assistance recipients?

Tribes which currently operate employment programs funded through other sources, such as those under the Job Training Partnership Act (JTPA) or Employment Assistance (EA) under the Bureau of Indian Affairs (BIA), must provide verifiable documentation that: At least twenty percent (20%) of those served in such an employment program were public assistance recipients during the most recent program or fiscal year; *and* employment services have been provided to a minimum of fifty (50) public assistance recipients over the last two program or fiscal years.

§ 646.220 What criteria apply to TANF/NEW tribes regarding the provision of ''substantial services''?

None. Tribes which operate TANF or NEW programs do not need to meet the criteria for providing ''substantial services'' to public assistance recipients.

§ 646.225 If a tribe is awarded an INA WtW grant, is the tribe required to participate in an evaluation of the program?

Yes. The Act specifies that each INA WtW grantee ''must agree to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation * * * and to cooperate with the conduct of any such evaluation.'' [42 U.S.C. 612(a)(3)(B)(iv)]

Subpart C—Application for INA WtW Grants

§ 646.300 How does my tribe apply for an INA WtW grant?

Each eligible tribe must submit an INA WtW plan to the Department of Labor in accordance with the planning instructions issued by the Department of Labor. For those tribes with an approved tribal family assistance plan (TANF plan), the application for an INA WtW grant must take the form of an addendum to that TANF plan. Tribes already participating in the demonstration project under Public Law 102–477 [25 U.S.C. 3401 *et seq.*], The Indian Employment, Training and Related Services Demonstration Act of 1992, should reference § 646.900 of this part. Planning information is also available on the INA WtW web site at www.wdsc.org/dinap.

§ 646.305 Can a consortium of Federally-recognized tribes apply for an INA WtW grant on behalf of consortium member tribes approved to operate a TANF or NEW program?

Yes. Consortium member tribes which operate approved TANF or NEW programs are by law eligible to apply for an INA WtW grant. Their consortium may apply for the INA WtW grant on their behalf, under the following circumstances: if an established consortium exists for one purpose, such as operating a JTPA grant, this established consortium may apply for an INA WtW grant on behalf of those member tribes authorized to receive NEW funding.

§ 646.310 Some of our consortium members operate their own TANF/NEW programs, and some do not. Can we still apply for an INA WtW grant as a consortium?

Yes. For those consortium member tribes which DO NOT operate TANF or NEW programs, they must collectively meet the ''substantial services'' criteria.

§ 646.315 If our consortium members not operating TANF or NEW programs meet the ''substantial services'' criteria, do we then have to submit two separate INA WtW plans?

Yes. Because of the different funding formulas involved for FY 1998, such a ''mixed consortium'' (composed of tribes which operate TANF/NEW programs and those which do not) shall submit two plans for providing WtW services across the consortium, one plan for the TANF/NEW tribes and the other for those tribes eligible under the ''substantial services'' criteria. However, once both plans have been funded, the consortium may administer one program across the consortium.

§ 646.320 If we choose to operate a single INA WtW program for our ''mixed consortium'' for FY 1998, must we submit a single plan to the Department for FY 1999?

Yes. All FY 1998 INA WtW grantees must submit AFDC/TANF counts to the Department so that a single funding formula may be utilized for FY 1999.

§ 646.325 What unique documentation is required of a tribal consortium?

Consortium tribes must submit a legally-binding consortium agreement signed by all the tribes in the consortium with the grant application.

§ 646.330 If our tribe did not receive an INA WtW grant for FY 1998, can we still receive funding for FY 1999?

Yes, provided the tribe or consortium is eligible under the criteria cited at § 646.200 of this part. Tribes or consortia having to meet the ''substantial services'' criteria may use verifiable data from any employment program operated by the tribe, as was the case for FY 1998. Refer to section 646.215 for these criteria. Tribes or consortia are encouraged to submit State-negotiated AFDC/TANF counts for their area prior to applying for FY 1999 INA WtW funds.

Subpart D—Participant Eligibility, Limits, and Allowable Activities

§ 646.400 What TANF recipients are eligible for services under INA WtW grants?

Individual TANF clients must meet the conditions outlined at section 403(a)(5)(C), clauses (ii), or (iii), or (iv) of the amended Social Security Act. For INA WtW purposes, an individual determined to have low skills in reading or mathematics must be proficient at the 8.9 grade level or below. An individual determined to have a poor work history must have worked no more than three (3) consecutive months in the past twelve (12) calendar months.

§ 646.405 What activities are allowable under the Welfare-to-Work program?

All allowable activities are described at section 403(a)(5)(C)(i) of the Social Security Act. INA WtW funds shall be used to ''move individuals into and keep individuals in lasting unsubsidized employment by means of any of the following:''

(a) The conduct and administration of community service or work experience programs;

(b) Job creation through public or private sector employment wage subsidies;

(c) On-the-job training;

(d) Contracts with public or private providers of readiness, placement, and post-employment services;

(e) Job vouchers for placement, readiness, and post-employment services; and

(f) Job retention or support services if such services are not otherwise available.

§ 646.410 Are there any special rules governing the use of job vouchers?

In addition to the requirements at 29 CFR 97.36(i) and 29 CFR 95.48, contracts or vouchers for job placement services supported by INA WtW funds must include a provision to require that at least one-half (½) of the payment occur after an eligible individual placed into the workforce has been in the workforce for six (6) months. This provision applies only to placement in unsubsidized jobs.

§ 646.415 What kind of ''job readiness'' services are allowable under the INA WtW Program?

Job readiness services include activities necessary to prepare an individual for employment. Such activities include, but are not limited to: Intake; eligibility determination; testing; assessment; orientation to the world of work; job search skills; job search assistance; job clubs; and employment counseling.

§ 646.420 What assistance can be provided under the ''supportive services'' category?

The provision of supportive services must be directly related to retaining employment, and not otherwise available to the client. Supportive services include, but are not limited to: Day care; transportation; work or protective clothing or equipment; tools; medical devices such as eyeglasses or braces; food; shelter; special services or equipment for the disabled; and financial counseling. Supportive services may be provided in-kind or through cash assistance. In cases where severe substance abuse or chemical dependency is a significant barrier to employment, substance abuse treatment may be undertaken as a ''supportive services'' activity, to the extent that such services do not constitute medical services.

§ 646.425 Are any education or training activities allowable under the INA WtW grant?

Although the Act does not authorize the use of grant funds for independent or stand-alone training activities, the Department recognizes that basic education and skills development as part of an employment experience will be needed by some recipients in order to achieve the ultimate objective of INA WtW assistance, which is self-

sufficiency. Therefore, basic education and vocational skills training where needed, based on an assessment of the recipient's needs, may be provided as a post-employment service where the recipient is employed in either a subsidized or unsubsidized job.

§ 646.430 Are there any time limits on client participation under the INA WtW program?

There are no specific participant time limitations for the INA WtW program. However, grantees should keep in mind the purpose of WtW, which is to provide transitional assistance to hard-to-employ welfare recipients to help them secure lasting, unsubsidized employment.

Subpart E—Tribal Service Areas and Populations

§ 646.500 We're a TANF/NEW tribe. What is my tribe's service area and/or population under an INA WtW grant?

NEW tribes will have the same service area and service population as they have under the NEW program. TANF tribes may elect to serve only their own tribal members in their service area, in accordance with their TANF funding.

§ 646.505 My tribe (or consortium) must qualify for an INA WtW grant under the ''substantial services'' criteria. How will our service area be determined?

Tribes qualifying for the INA WtW program under the ''substantial services'' criteria (i.e., not operating their own TANF or NEW programs) may use the service area(s) established for the tribe under the JTPA or BIA Employment Assistance programs. INA WtW grantees funded under the ''substantial services'' criteria shall ensure that all AFDC/TANF recipients within the service area for which the grantee was designated are afforded an equitable opportunity for INA WtW services, because their funding is predicated on 1990 Census data for all Native Americans residing in their service area, regardless of tribal affiliation. While there is no individual entitlement to INA WtW services, all eligible AFDC/TANF recipients shall be afforded equal consideration in the decision to provide INA WtW services. Service areas differing from those outlined above may be negotiated with the Department of Labor.

§ 646.510 Are there any special service area provisions made for Indians residing in Oklahoma?

Yes. With the exception of the Osage reservation in Oklahoma, service areas will be determined by reference to the ''tribal jurisdiction statistical areas'' (TJSAs). TJSAs are defined by the Bureau of the Census as being areas, delineated by Federally-recognized tribes in Oklahoma without a reservation, for which the Census Bureau tabulates data. TJSAs represent areas generally containing the American Indian population over which one or more tribal governments have jurisdiction. Service areas for Oklahoma Indian residents differing from those outlined under the TJSAs may also be negotiated with the Department of Labor.

Subpart F—Funding and Spending Requirements

§ 646.600 How will the INA WtW grant funding allotments be determined?

Funds will be allotted to INA WtW grantees on a formula basis. To determine the FY 1998 allotments, poverty data from the 1990 Decennial Census will be used to determine the ''split'' between TANF/NEW tribes and all other tribes. The percentage of the annual appropriation reserved for TANF and NEW tribes will then be allocated using 1995 AFDC counts previously published by DHHS. For FY 1999, a single funding formula will be employed utilizing AFDC/TANF counts.

§ 646.605 What spending limitations are imposed on the INA WtW program?

No less than seventy percent (70%) of INA WtW funds must be spent directly on assistance for the benefit of TANF recipients who meet the eligibility requirements of section 403(a)(5)(C)(ii) of the Social Security Act. Up to thirty percent (30%) of INA WtW funds can be spent to provide assistance to individuals who meet the eligibility requirements of section 403(a)(5)(C)(iii) of the Social Security Act. No more than twenty percent (20%) of INA WtW grant funds may be spent for administration. Refer to § 646.400 for the definitions of ''low skills in reading or mathematics'' and ''poor work history''.

§ 646.610 What definition of ''administration'' is applicable to the INA WtW program?

Administrative costs consist of all direct and indirect costs associated with the management of the grantee's program. These costs include but are not limited to: the salaries and fringe benefits of personnel engaged in executive, fiscal, data collection, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions; and related materials, supplies, equipment, office space costs, and staff training. Also included are salaries and fringe benefits of direct program administrative positions such as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these program administration positions are charged to administration.

§ 646.615 How long does the tribe have to spend INA WtW funds?

INA WtW grantees must expend all allotted funds within three years after the effective date of each fiscal year grant agreement signed by the Grant Officer, pursuant to section 403(a)(5)(C)(vii) of the Social Security Act. Unexpended funds must be returned to the Department in accordance with the closeout provisions at 29 CFR parts 97 or 95, as applicable.

§ 646.620 Are there any other restrictions on the use of INA WtW funds?

Yes. INA WtW funds may not be used for any other fund matching requirements under this Act or other Federal law, pursuant to section 403(a)(5)(C)(vi) of the Social Security Act.

Subpart G—Recordkeeping and Reporting Requirements

§ 646.700 What are the recordkeeping requirements for the INA WtW program?

Tribes must meet the recordkeeping and retention requirements of the Department's regulations at 29 CFR 97.42. Alaska Native regional nonprofit corporations must follow the requirements of 29 CFR 95.53. Tribes receiving INA WtW grants may follow the recordkeeping requirements of section 411 of the Social Security Act, as applicable.

§ 646.705 What are the reporting requirements for the INA WtW program?

Grantees are required to submit both quarterly and annual reports covering program activity and financial expenditures. Two forms have been approved by OMB for INA WtW reporting. A modified version of the Standard Form (SF) 269A (ETA 9069–1) shall be used to report financial expenditures. A Participation and Characteristics Report (PCR) (ETA 9069) shall be used to report program activity and participant characteristics.

§ 646.710 Are tribes operating a TANF program required to report INA WtW activities under TANF as well?

Yes. Pursuant to the requirements of section 411 of the Social Security Act, INA WtW grantees who are TANF tribes shall report INA WtW activities under the TANF program, in addition to

submitting the INA WtW reports cited above. However, tribes operating a NEW program and an INA WtW program, but not their own TANF program, are exempt from the reporting requirements described in section 411 of the Social Security Act.

Subpart H—Waivers and Performance Standards

§ 646.800 Are statutory waivers allowable under the INA WtW program?

Yes. The Secretary of Labor may waive or modify any provision of section 403(a)(5)(C) [except for clause (vii) thereof, related to the deadline for expenditure of funds] of the Social Security Act, which are otherwise applicable to INA WtW grantees. Accordingly, the Secretary may waive the statutory requirements relating to client eligibility for services, allowable activities, and spending limits. Any waiver(s) requested must demonstrate how the waiver, if granted, will increase the efficiency or effectiveness of the program. Waivers may be requested at any time, and shall be effective as of the date indicated in the approval letter. Grantees must specify and support each provision to be waived.

§ 646.805 What are the performance measures tribes have to meet under the INA WtW program?

The Secretary has determined that the most important measures of the tribe's performance are the number of participants entering unsubsidized employment, the duration of that employment, and the increase in their earnings. Grant applicants will be required to submit planned outcome figures with their INA WtW plans. These planned outcomes will be compared against reported outcomes in the tribe's annual report. In addition, INA WtW grantees must negotiate in good faith with the Secretary of DHHS with respect to the substance and funding of any evaluation under section 413(j) of the Social Security Act, and must cooperate with the conduct of any such evaluation.

Subpart I—Miscellaneous Provisions and Requirements

§ 646.900 May a tribe combine its INA WtW grant with other employment and training programs under Pub. L. 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992?

Yes. All grants awarded under the INA WtW program are formula-funded, so any INA WtW grant funds awarded to a tribe can therefore be included in a consolidated plan authorized by Public Law 102–477. For those tribes already participating in the ''477'' demonstration effort, application for an INA WtW grant will take the form of a ''477 plan'' modification submitted to the lead agency responsible for the ''477'' program.

§ 646.905 What are the other Federal laws which must be followed by INA WtW grantees?

All otherwise applicable Federal statutes, including those dealing with equal employment opportunity, workplace safety, employment standards, treatment of individuals with disabilities, age discrimination, and civil rights, must be followed by all INA WtW fund recipients.

§ 646.910 What are a tribe's appeal rights under the INA WtW program?

The administrative procedures in proceedings initiated by grantees funded under section 401 of the Job Training Partnership Act, as codified at 20 CFR part 636, shall apply to appeals of agency action by INA WtW grantees. These appeal procedures include the following provisions:

(a) Within twenty-one (21) days of the receipt of a denial of a request for a statutory waiver under § 646.800 of this part, or within twenty-one (21) days of receipt of a final determination imposing a sanction or corrective action issued pursuant to 20 CFR 636.8, an INA WtW grantee whose request for a statutory waiver has been denied, or who seeks review of a Grant Officer's Final Determination, may request a hearing before the Department's Office of Administrative Law Judges pursuant to 20 CFR 636.10.

(b) The decision of an Administrative Law Judge (ALJ) shall be final unless, within twenty (20) days of the decision, a party dissatisfied with that ALJ decision has filed a petition for review with the Administrative Review Board (ARB), established pursuant to the provisions of Secretary's Order No. 2–96, published at 61 FR 19977 (May 3, 1996). This petition shall specifically identify the procedure, fact, law, and/or policy to which exception is taken. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested, shall be considered resolved and not subject to further review. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ shall constitute final agency action unless the ARB, within thirty (30) days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB shall be decided within 120 days of such acceptance. If no decision is reached in that time, then the decision of the ALJ shall constitute final Departmental action.

§ 646.915 What administrative requirements must be met when the INA WtW program ends?

In accordance with the Department's regulations at 29 CFR 97.50 for tribes and 29 CFR 95.71 for nonprofits, all expiring grants will be closed out. This means that all funds drawn down under the INA WtW grant must be accounted for as allowable expenditures or returned to the Department. The Department will issue appropriate closeout forms and instructions to all INA WtW grantees after the program ends.

[FR Doc. 98–8350 Filed 3–31–98; 8:45 am]
BILLING CODE 4510–30–P

Federal Register

Wednesday
April 1, 1998

Part V

Department of Education

Even Start Statewide Family Literacy Initiative Grants; Notice

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.314A]

Even Start Statewide Family Literacy Initiative Grants

AGENCY: Department of Education.

Notice inviting State applications for new awards with fiscal year (FY) 1998 funds, and waiver of reporting requirements for Even Start Statewide Family Literacy Initiative grants

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition. Only a State office or agency may apply.

Purpose of Program: To enable States to plan and implement statewide family literacy initiatives under the Even Start Family Literacy Program. Initiative activities must be conducted through a consortium of State, local, and other institutions, organizations, or agencies.

Eligible Applicants: State office or agency.

Deadline for Transmittal of Applications: June 29, 1998.

Deadline for Intergovernmental Review: August 28, 1998.

Available funds: $1,000,000.

Note: Under this program, States receiving grants must make available non-Federal contributions in an amount equal to not less than the Federal funds provided under the grant, as required by section 1202(c)(2) of the Elementary and Secondary Education Act (ESEA). Grantees may not use funds awarded under these grants for indirect costs either as a direct charge or as part of the matching requirement.

Estimated Range of Awards: $100,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Note: This Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: States receiving funds under this grant authority will use these funds to plan and implement statewide family literacy initiatives under the Even Start Family Literacy Program to coordinate and integrate existing Federal, State, and local literacy resources. These resources must include, but are not limited to, resources available under Even Start, the Adult Education Act, Head Start, and the Family Support Act of 1988 (or successor statutes). Initiative activities must be conducted through a consortium of State, local, and other institutions, organizations, or agencies. The State must make available non-Federal contributions in an amount not less than the Federal funds provided under the grant for the costs to be incurred by the consortium in carrying out the activities for which the grant is awarded.

Invitational Priority: The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority—Statewide family literacy initiatives that:

- Coordinate their activities with State and local endeavors under the *America Reads Challenge* initiative, including Federal Work-Study tutoring programs and America Reads/Read*Write*Now pilot sites (information about the *America Reads Challenge* is available by telephone at 1–800–USA–LEARN, or TDD 1–800–437–0833; and through the Department's Web site at www.ed.gov/inits/americareads); and
- Develop State capacity to coordinate and integrate existing resources that support family literacy and core family literacy components (early childhood education, adult basic and secondary education, and parenting education), and, especially resources focusing on—

(1) Young children's cognitive and language development, and parents' involvement in that early development; and

(2) English literacy for families with limited English proficiency.

Waiver of Reporting Requirement

Under the EDGAR, an applicant generally must submit annual performance and financial reports to the Department. (See 34 CFR 75.720, 80.40, and 80.41). However, in the interest of reducing burden at the State level, the Secretary has determined that performance and financial reports are unnecessary until the end of the project period (up to 24 months), and therefore waives the requirements for performance and financial reports at the end of the first year (unless the end of the first year coincides with the end of the project period). This waiver is in accordance with the Secretary's authority under these regulations.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(1) The maximum composite score for all of these criteria is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Meeting the purposes of the authorizing statute.* (10 points). The Secretary considers how well the project will meet the purpose of section 1202(c) of the ESEA (Even Start Statewide Family Literacy Initiatives grants). In determining how well the project will meet the purpose of section 1202(c), the Secretary considers how well the project will enable the State to plan and implement a statewide family literacy initiative, through a consortium of entities, to coordinate and integrate existing Federal, State, and local literacy resources consistent with the purpose of the Even Start Family Literacy Program (Part B of Title I of the ESEA).

(b) *Need for project.* (10 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

Note: The Secretary invites applicants to describe any existing State initiatives to promote family literacy.

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(iii) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(c) *Significance.* (20 points). The Secretary considers the significance of

the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The national significance of the proposed project.

(ii) The likelihood that the proposed project will result in system change or improvement.

(iii) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(iv) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(d) *Quality of the project design.* (20 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(ii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(e) *Quality of project personnel.* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. (1) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, or project consultants or subcontractors.

(f) *Adequacy of resources.* (10 points.) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(g) *Quality of the management plan.* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of project evaluation.* (10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. The addresses of individual State Single Point of Contact are in the appendix to this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.314A, U.S. Department of Education, Room 6300, 600 Independence Avenue, SW, Washington, DC 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.314A), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725;

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.314A), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If any application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application,the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized and submitted. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension,and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A). (*See* amendments by 61 FR 1412 (1/19/96).

Notice to all Applicants (Section 427 of the General Education Provisions Act).

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application form, assurances, and certifications must each have an original signature. No grant may be awarded unless a completed application form, including the signed assurances and certifications, have been received.

FOR FURTHER INFORMATION CONTACT: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (4400, Portals), Washington, DC 20202–6132. Telephone (202) 260–0991. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Information about the Department's funding opportunities including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. section 6362(c).

Dated: March 26, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

INSTRUCTIONS FOR PART III: APPLICATION NARRATIVE

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should--

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application package, including--

(a) A description of the activities and services for which assistance is sought;

(b) A comprehensive statement of how the applicant will plan and implement a statewide family literacy initiative in accordance with section 1202(c) of the ESEA; and

(c) An assurance that the plan will be developed in consultation with the listed State, local, and other institutions, organizations, and agencies that will form the consortium and carry out the plan.

4. Include, in the application budget, a description of the non-Federal contributions that the State will make, in an amount not less than the Federal funds awarded under the grant, for the costs to be incurred by the consortium in carrying out the grant activities. (Funds awarded under these grants may not be used for indirect costs either as a direct charge or as part of the matching requirement.)

5. Provide the following in response to the attached "Notice to all Applicants": (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

6. For any applicant other than the State educational agency, include a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 USC 8856(a)) that the applicant has filed with its SEA and that is applicable to this application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is 1810-0590. The time required to complete this information collection is estimated to average 7½ hours per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Room 4400, Portals Building, Washington D.C. 20202-6132.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) . The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: **Congressional District,** *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

_____
~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:
~~Federal Use Only~~	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

STATE SINGLE POINTS OF CONTACT
(as of December 2, 1997)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SPOCs). Because participation is voluntary, some States and territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana; Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

ARIZONA

Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280-1315
FAX: (602) 280-8144

ARKANSAS

Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th Street, room 412
Little Rock, Arkansas 72203
Telephone: (501) 682-1074
FAX: (501) 682-5206

CALIFORNIA

Grants Coordinator
Office of Planning & Research
1600 Nineth Street, room 250
Sacramento, California 95814
Telephone: (916) 323-7480
FAX: (916) 323-3018
Block Grants only that pertain to Mental Health
Substance Abuse
PATH

DELAWARE

Francine Booth
State Single Point of Contact
Executive Department
Office of the Budget
Thomas Collins Building
P.O. Box 1401
Dover, Delaware 19903
Telephone: (302) 739-3326
FAX: (302) 739-5661

DISTRICT OF COLUMBIA

Charles Nichols
State Single Point of Contact
Office of
Grants Management & Development
717 14th Street, NW., suite 400
Washington, D.C. 20005
Telephone: (202) 727-6554
FAX: (202) 727-1617

FLORIDA

Florida State Clearinghouse
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100
Telephone: (904) 922-5438
FAX: (904) 487-2899

GEORGIA

Tom L. Reid, III
Coordinator
Georgia State Clearinghouse
270 Washington Street, S.W. - 8th Floor
Atlanta, GA 30334
Telephone: (404) 656-3855
FAX: (404) 656-3828

ILLINOIS

Ms. Virginia Bova
Single Point of Contact
Illinois Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3-400
Chicago, IL 60601
Telephone: (312) 814-6028
FAX: (312) 814-1800

INDIANA

Frances Williams
State Budget Agency
212 State House
Indianapolis, Indiana 46204-2796
Telephone: (317) 232-5619
FAX: (317) 233-3323

IOWA

Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development
200 East Grand Avenue
Des Monies, Iowa 50309
Telephone: (515) 242-4719
FAX: (515) 242-4809

KENTUCKY

Kevin J. Goldsmith, Director
John-Mark Hack, Deputy Director
Sandra Brewer, Executive Secretary
Intergovernmental Affairs
Office of the Governor
700 Capitol Avenue
Frankfort, Kentucky 40601
Telephone: (502) 564-2611
FAX: (502) 564-2849

MAINE

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287-3261
FAX: (207) 287-6489

MARYLAND

William G. Carroll
Manager, Plan & Project Review
Maryland Office of Planning
301 W. Preston Street, room 1104
Baltimore, Maryland 21201-2365
Staff Contact: Linda Janey
Telephone: (410) 767-4490
FAX: (410) 767-4480

MICHIGAN

Richard Pfaff
Southeast Michigan Council of Governments
660 Plaza Drive, suite 1900
Detroit, Michigan 48226
Telephone: (313) 961-4266
FAX: (313) 961-4869

MISSISSIPPI

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
455 North Lamar Street
Jackson, Mississippi 39302-3087
Telephone: (601) 359-6762
FAX: (601) 359-6764

MISSOURI

Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Room 760, Truman Building
Jefferson City, Missouri 65102
Telephone: (314) 751-4834
FAX: (314) 751-7819

NEVADA

Department of Administration
State Clearinghouse
Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-4065
FAX: (702) 687-3983

NEW HAMPSHIRE

Jeffrey H. Taylor
Director, New Hampshire Office
of State Planning
Attn: Mike Blake
Intergovernmental Review Process
2 ½ Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271-2155
FAX: (603) 271-1728

NEW MEXICO

Robert Peters
State Budget Division
Room 190, Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827-3640

NEW YORK

New York State Clearinghouse
Division of the Budget
State Capitol
Albany, New York 12224
Telephone: (518) 474-1605
FAX: (518) 486-5617

NORTH CAROLINA

Chrys Baggett, Director
N.C. State Clearinghouse
Office of the Secretary of Admin.
116 West Jones Street, suite 5106
Raleigh, North Carolina 27603-8003
Telephone: (919) 733-7232
FAX: (919) 733-9571

NORTH DAKOTA

North Dakota Single Point of Contact
Office of Intergovernmental Assistance
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0170
Telephone: (701) 224-2094
FAX: (701) 224-2308

RHODE ISLAND

Kevin Nelson
Review Coordinator
Department of Administration
Division of Planning
One Capitol Hill, 4th floor
Providence, Rhode Island 02908-5870
Telephone: (401) 277-2656
FAX: (401) 277-2083

SOUTH CAROLINA

Rodney Grizzle
State Single Point of Contact
Grant Services
Office of the Governor
1205 Pendleton Street, room 331
Columbia, South Carolina 29201
Telephone: (803) 734-0494
FAX: (803) 734-0356

TEXAS

Tom Adams
Governors Office
Director, Intergovernmental Coordination
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 463-1771
FAX: (512) 463-1880

UTAH

Carolyn Wright
Utah State Clearinghouse
Office of Planning and Budget
Room 116, State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1535
FAX: (801) 538-1547

WEST VIRGINIA

Fred Cutlip, Director
Community Development Division
W. Virginia Development Office
Building #6, room 553
Charleston, West Virginia 25305
Telephone: (304) 558-4010
FAX: (304) 558-3248

WISCONSIN

Jeff Smith
Section Chief, State/Federal Relations
Wisconsin Department of Administration
101 East Wilson Street, 6th floor
P.O. Box 7868
Madison, Wisconsin 53707
Telephone: (608) 266-0267
FAX: (608) 267-6931

WYOMING

Matthew Jones
State Single Point of Contact
Office of the Governor
200 West 24th Street
State Capitol, room 124
Cheyenne, Wyoming 82002
Telephone: (307) 777-7446
FAX: (307) 632-3909

TERRITORIES

GUAM

Mr. Giovanni T. Sgambelluri
Director, Bureau of Budget
and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone: 011-671-472-2285
FAX: 011-671-472-2825

PUERTO RICO

Norma Burgos/Jose E. Caro
Chairwoman/Director
Puerto Rico Planning Board
Federal Proposals Review Office
Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940-1119
Telephone: (809) 727-4444;(809) 723-6190
FAX: (809) 724-3270;(809) 724-3103

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer
Office of Management and Budget
Office of the Governor
Saipan, MP 96950
Telephone: (670) 664-2256
FAX: (670) 664-2272
Contact person: Ms. Jacoba T. Seman
Federal Programs Coordinator
Telephone: (670) 664-2289
FAX: (670) 664-2272

VIRGIN ISLANDS

Nellon Bowry
Director, Office of Management and Budget
#41 Norregade Emancipation Garden Station
Second Floor
Saint Thomas , Virgin Islands 00802
Please direct all questions and correspondence about intergovernmental review to:
Linda Clarke
Telephone: (809) 774-0750
FAX: (809) 776-0069

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone: (202) 395-5858) at the Office of Management and Budget and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalogue of Federal Domestic Assistance. The last changes made were Kentucky (12-2-97) and California telephone and FAX numbers (1-29-98).

[FR Doc. 98–8356 Filed 3–31–98; 8:45 am]
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Federal Register

Wednesday
April 1, 1998

Part VI

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[USCG–97–2799]

RIN 2115–AF49

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise user fees for Coast Guard services relating to the issuance of merchant mariner licenses, certificates of registry, and merchant mariner documents. The proposed revisions are based on the most recent recalculation of program costs associated with mariner documentation services. The two CFR sections in which the fees are published would also be reformatted from narrative text into a more user-friendly table.

DATES: Comments must reach the Coast Guard on or before September 28, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–97–2799], U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room Pub. L.–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this rulemaking on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329; for information concerning the notice of proposed rulemaking (NPRM) provisions, contact CDR Mark McEwen, Project Manager, U.S. Coast Guard Headquarters, Office of Planning and Resources (G-MRP), telephone 202–267–1409.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [USCG–97–2799] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a public meeting would be helpful to this rulemaking. If an opportunity for oral presentations will help the rulemaking procedures, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background

Regulatory History

The Coast Guard published a final rule entitled ''User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation'' in the **Federal Register** on March 19, 1993 (59 FR 15228). The rule established marine license, certificate of registry, and merchant mariner document user fees in 46 CFR parts 10 and 12. The final rule became effective on April 19, 1993.

On September 27, 1994, the Coast Guard issued a final rule (59 FR 49294) requiring certificates of registry and merchant mariner's documents to be renewed every 5 years, and user fees for renewals were added to the fee schedules in 46 CFR parts 10.109 and 12.02–18.

Litigation History

On April 15, 1993, Seafarers International Union of North America, et al., brought suit against the Coast Guard to enjoin it from collecting marine licensing and merchant mariner documentation user fees. On November 23, 1994, the U.S. District Court for the District of Columbia affirmed the Coast Guard's authority to establish these fees and it confirmed the methodology used by the Coast Guard to establish these fees. However, the Court ordered the Coast Guard to recalculate the costs associated with its merchant mariner licensing and documentation (MMLD) program, reassess its published fees, and subject the recalculation to public notice and comment. The Court also ordered the Coast Guard to stop charging the $17 fee for Federal Bureau of Investigation (FBI) criminal record checks. The Coast Guard instructed the Regional Examination Centers (REC) to stop collecting the $17 criminal record check fee, and began the process of recalculating its program costs.

The recalculation of costs and the reassessment of user fees ordered by the Court were completed on September 25, 1996. On October 31, 1996, the Coast Guard published in the **Federal Register** a notice of its recalculation of program costs and reassessment of fees (61 FR 56199). The Coast Guard encouraged interested persons to review and comment on the recalculation during the 60-day comment period which closed December 30, 1996.

On March 27, 1997, on appeal, the U.S. District Court of Appeals for the District of Columbia overturned the District Court's ruling on collecting the fee for FBI criminal record checks, but the Coast Guard has not yet reinstituted collections of the $17 criminal record check fee.

On May 22, 1997, the District Court ordered the Coast Guard to begin rulemaking proceedings and complete a final rule on MMLD user fees no later than April 30, 1998.

On September 17, 1997, the Coast Guard and the SIU settled the litigation. The final rule completion date of April 30, 1998, no longer applies to this rulemaking. However, the terms of the settlement require the Coast Guard to go forward with this rulemaking.

Comments on Notice of Recalculation

The Coast Guard received 163 comments in response to the October 31, 1996, notice of recalculation. Only three comments specifically addressed the cost elements, methodology, or data collection procedures of the recalculation. These issues were considered in developing this proposal.

The remaining 160 comments opposed user fees in general. Many comments objected to what they believed was a proposed or actual increase in fees, and some requested a copy of the notice of recalculation and

reassessment. They also objected to the notice only being published in the **Federal Register** because mariners generally do not read the **Federal Register**. A number of comments requested the comment period be extended some additional time to allow members of the merchant marine, who are often away from their home port for 30 days or more, to participate in the ''rulemaking.''

The Coast Guard did not extend the comment period on the notice of recalculation. The notice was not a regulatory proposal and no agency action was proposed at that time. The 90-day comment period was adequate for the purpose of reviewing and commenting on the Coast Guard's recalculation.

Discussion of Proposed Rule

Overview

The Coast Guard proposes to—

- Revise the user fees for issuing merchant mariner licenses, certificates of registry, and merchant mariners documents; and
- Reformat 46 CFR 10.109 and 12.02–18, the two sections in which the fees are published, by replacing the current narrative text with a more user-friendly table format.

Proposed Fees

The Coast Guard used the recalculation data to develop the revised MMLD user fees. In six cases, the recalculated cost figures indicated that the costs of providing the services was lower than the currently published fees. The Coast Guard took immediate action to reduce the amount collected for those six fees. This proposal would make five of those reductions permanent.

With the exception of 3 fees that remained the same, in all other cases, the cost of providing the services was higher than the currently published fees. This proposal would raise those fees based on cost figures developed during the recalculation and reassessment. The methodology for recalculation and the issues concerning the proposed fee adjustments are explained in detail in the draft regulatory assessment.

The following illustrations show §§ 10.109 and 12.02–18 in the current CFR text format, and compare the currently published fees, the recalculated program costs, and the proposed fees.

ILLUSTRATION 1.—LICENSES AND CERTIFICATES OF REGISTRY

CFR Section—46 CFR 10.109	Published fee	Recalculated program costs	Proposed fees
(a) For Licenses:			
(1) Upper Level:			
(i) For evaluation for an original license	$87	[1] $119	$115
(ii) For evaluation for a license other than an original, including a raise in grade of a license	70	102	100
(iii) For administration of an examination, including allowable retests	150	110	110
(iv) For administration of a limited examination required under subpart D of this part, including allowable retests	55	[2] 45	45
(v) For issuance of a license	35	62	45
(2) Lower level:			
(i) For evaluation for an original license	82	[3] 136	115
(ii) For evaluation for a license other than an original, including a raise in grade in a license	65	119	100
(iii) For administration of an examination, including allowable retests	80	98	95
(iv) For administration of a limited examination required under subpart D of this part, including allowable retests	55	45	45
(v) For issuance of a license	35	51	45
(3) Radio Officer:			
(i) For evaluation for an original license	62	[4] 128	65
(ii) For evaluation for a license other than an original, including a raise in grade in a license	45	111	50
(iii) For issuance of a license	35	61	45
(b) For endorsements, except the radar observer endorsement, subsequent to the issuance of the license:			
(1) For evaluation for single or multiple endorsements	45	50	50
(2) For administration of examinations, including allowable retests	55	45	45
(3) For issuance of single or multiple endorsements to an existing license	35	46	45
(c) For renewal of a license:			
(1) For evaluation for renewal of a license:			
(i) Except for a radio officer	45	50	50
(ii) For a radio officer	45	n/a	50
(2) For administration of an open-book exercise if required under § 10.209 of this part	55	45	45
(3) For issuance of a renewed license	35	46	45
(4) For issuance of a renewed license, without evaluation or examination, for continuity purposes only	35	[5] 46	45
(d) For Certificates of Registry:			
(1) For Chief Purser, Purser, and Senior Assistant Purser:			
(i) For evaluation of an unlicensed applicant for a certificate of registry	62	[6] 123	120
(ii) For evaluation of an applicant who holds a license or certificate of registry issued under this part	45	106	105
(iii) For issuance of a certificate of registry	35	179	45
(2) For Junior Assistant Purser, Medical Doctor, and Professional Nurse:			
(i) For evaluation of an unlicensed applicant for a certificate of registry	17	[7] 128	120
(ii) For evaluation of an applicant who holds a license or certificate of registry issued under this part	([11])	111	105

ILLUSTRATION 1.—LICENSES AND CERTIFICATES OF REGISTRY—Continued

CFR Section—46 CFR 10.109	Published fee	Recalculated program costs	Proposed fees
(iii) For issuance of a certificate of registry	35	61	45
(3) For renewal of a Certificate of Registry:			
(i) For evaluation for renewal of a certificate of registry	(11)	[8] 50	50
(ii) For issuance of a renewed certificate of registry	35	46	45
(e) For reissue of a license or certificate of registry issued under this part where a fee is required in § 10.219	35	106	45
(f) For endorsements to existing license, a raise in grade of a license, an additional license, or certificate of registry where further evaluations are not required	(9)	n/a	(11)
(g) For endorsements to an existing license, a raise in grade of a license, or an additional license where further examinations are not required	(10)	n/a	(11)

Notes:
[1] Program costs are equal to cost of evaluating an upper level license applicant for a license other than an original plus the cost of an FBI criminal record check.
[2] Program costs are the same as the costs associated with administering an open-book exercise for renewal of a license.
[3] Program costs are equal to cost of evaluating a lower level license applicant for a license other than an original plus the cost of an FBI criminal record check.
[4] Program costs are equal to cost of evaluating a Radio Officer license applicant for a license other than an original plus the cost of an FBI criminal record check.
[5] Program costs are the same as the costs associated with the issuance of a renewed license.
[6] Program costs are equal to the cost of evaluating a licensed Chief Purser, Purser or Senior Purser Certificate of Registry applicant plus the cost of an FBI criminal record check.
[7] Program costs are equal to the cost of evaluating a licensed Junior Assistant Purser, Medical Doctor or Professional Nurse Certificate of Registry applicant plus the cost of an FBI criminal record check.
[8] Program costs are the same as the costs associated with the evaluation of a license renewal applicant.
[9] No evaluation fee.
[10] No examination fee.
[11] No fee.

ILLUSTRATION 2.—MERCHANT MARINER DOCUMENTS

CFR Section—46 CFR 12.02–18(a)	Published fee	Recalculated program costs	Proposed fees
(1) For evaluation for an original document (does not apply if applicant holds a license or certificate of registry issued under part 10 of this chapter).	$17	[1] $128	$110
(2) For evaluation for a merchant mariner's document endorsed with a qualified rating:			
(i) For an original merchant mariner's document	$77	[2] $115	$110
(ii) For a merchant mariner's document other than an original	$60	$98	$95
(iii) Where further evaluation is not required, such as when a merchant mariner's document is issued incident to a license transaction.	No fee	n/a	No fee
(3) For administration of examination	$40	$144	$140
(4) For issuance of a document	$35	$53	$45
(5) For duplicate of a merchant mariner's document issued in this part where a fee is required in § 12.02–23.	$35	$106	$45
(6) For a duplicate continuous discharge book, record of sea service, or copies of certificates of discharge.	[3] $10	$106	[3] $10
(7) For renewal of a merchant mariner's document:			
(i) For evaluation for renewal of a merchant mariner's document endorsed with a qualified rating.	$45	$50	$50
(ii) For evaluation for renewal of a merchant mariner's document when submitted with a license where a renewal evaluation fee already applies.	No fee	n/a	No fee
(iii) For evaluation for renewal of a merchant mariner's document without qualified rating endorsement.	No fee	n/a	$50
(iv) For administration of open-book exercises required by § 12.02–27	$40	$45	$45
(v) For administration of MMD open-book exercises when required in addition to license open-book exercises for concurrent renewal of these documents.	Only the license exercise fee in § 10.109(c)(2) will apply [4].	$45 [5]	No fee [6]
(vi) For issuance of a renewal of a merchant mariner's document including those issued for continuity purposes only.	35	46	45

Notes:
[1] Program costs are equal to cost of evaluating an applicant for a merchant mariner's document without qualified rating endorsement plus the cost of an FBI criminal record check.
[2] Program costs are equal to the cost of evaluating an applicant for an original merchant mariner's document with qualified rating endorsement plus the cost of an FBI criminal record check.
[3] Payment of fee is not required if loss is caused by shipwreck or other casualty; other casualty includes damage to a ship caused by collision, explosion, tornado, wreck, flooding, grounding, beaching or fire (see § 12.02–23).
[4] Fee published in 46 CFR 10.109(c)(2) for administration of an open-book exercise for renewal of a license is equal to $55.
[5] Program costs are the same as the costs associated with the administration of an open-book exercise for renewal of a license.
[6] Payment of fee is not required for open-book exercise for renewal of MMD since payment is made during concurrent open-book exercise for renewal of license.

Reformatting

The Coast Guard proposes to reformat the two CFR sections (46 CFR 10.109 and 12.02–18) in which the fees are currently published. The current text presentation is confusing and does not easily identify the fees for each phase of an MMLD transaction. The Coast Guard proposes to replace the text with a table which is more user-friendly to the mariner and to REC personnel, and would help them determine the fees that apply to a particular transaction. For each MMLD transaction, the tables would set out the fees for each of the three transaction phases—evaluation, examination, and issuance. You can read across a single line to find the fees associated with all the phases in any particular license, certificate of registry, or merchant mariner document transaction. In the table format—

- *An n/a* in the fees column would mean there is no Coast Guard activity in that phase for that transaction; and
- *A no fee* in the fees column would mean there is an activity for that phase, but there is no fee charged for that activity.

The following illustration shows § 12.02–18, Fees, as it would appear in the proposed table format.

ILLUSTRATION 3.—PROPOSED TABLE 12.02–18—Fees

If you apply for—	And you need—		
	Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
Merchant Mariner Document:			
Original:			
Without endorsement	$110	n/a	$45
With endorsement	110	$140	45
Endorsement for qualified rating	95	140	45
Upgrade or Raise in Grade	95	140	45
Renewal without endorsement for qualified rating	50	n/a	45
Renewal with endorsement for qualified rating	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue/Replacement/Duplicate	n/a	n/a	[1] 45
Other Transactions:			
Duplicate Continuous Discharge Book	n/a	n/a	10
Duplicate record of sea service	n/a	n/a	10
Copy of certificate of discharge	n/a	n/a	10

[1] Duplicate for document lost as result of marine casualty—No Fee.

Criminal Record Check Fee

The Coast Guard would re-institute collection of the $17 FBI criminal record check fee when the final rule for this project becomes effective. The $17 FBI criminal record check fee would be included in the proposed evaluation phase fee for original documents.

Regulatory Assessment

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A separate Draft Regulatory Assessment document, however, has been prepared for this proposal and is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The total annual revenues from direct user fees under subtitle II of 46 U.S.C. 2110 does not exceed $27 million and the merchant marine licensing and documentation (MMLD) revenues for fiscal year 1996 were only $4.6 million. The proposed revisions would increase these revenues to an estimated $9.3 million. This represents the maximum amount of revenue that could be collected based on recalculated data and transaction figures. The total revenue of direct user fees under subtitle II of 46 U.S.C. 2110 for fiscal year 1997 did not exceed $23.1 million, well below the $100 million threshold that would make a rulemaking economically significant.

The proposed rule would affect all mariners required to hold a license or certificate of registry (COR) under 46 CFR part 10 or a merchant mariner document (MMD) under 46 CFR part 12. The Draft Regulatory Assessment contains a comparison of the proposed fees with 1994 mariner salary levels. It also contains a comparison of the proposed fees with professional license fees paid by members of other professions. It illustrates proposed fees as a percentage of typical annual salary and displays them along with the same type of percentages for other professions. The U.S. Maritime Administration (MARAD) provided a listing of typical salaries for persons employed in the marine industry in 1996. The Coast Guard also used 1994 salary data from the Bureau of Labor Statistics (BLS) for this analysis. Because MARAD used mean salary data from 1996 and BLS used median salary data from 1994, it is difficult to draw conclusions using these numbers. However, the information is included in the Draft Regulatory Assessment for general comparison purposes.

The impact of the proposed fees on the individual merchant mariner would occur at the time fees are paid. At all other years during the validity of the license, document, or certificate, if there are no document transactions, no payments are made. The relative economic impact of the proposed fees on each mariner would vary depending upon the number and type of documents held by the mariner and the mariner's ability to pay.

To assess the impact of the proposed fees on the individual mariner, the Coast Guard annualized fees over the period the documents were valid. We illustrated the document transactions a hypothetical mariner may require over the first 10 years he or she holds a license or document. We assumed that the document transactions this mariner would need during that period would include renewals, raises in grade and endorsements. Our analysis of the costs borne by the mariner covers a 10-year period. As an example, an individual who obtained an original upper level deck license requiring an examination would need to renew that license after 5 years, for a second 5-year period of validity. Over this 10-year period, we assumed the officer would need at least

one endorsement, which requires a one-time payment and is valid throughout the life of the license. Over the 10 years, that officer would incur a total cost of $550 for the original license, its renewal, and the endorsement. This is a $55 per year annualized cost to the mariner over that 10-year period.

Using the previous example and using the current fees, the mariner seeking an upper level license would have paid $542, which has a 10-year annualized cost of $54.20. The $8 total difference ($550 − $542=$8) between the cost of the transactions under the current fees and under the proposed fees would annualize over 10 years to $0.80 per year.

In the Draft Regulatory Assessment, salary data is shown for informational purposes and was used to establish a benchmark for comparison with the proposed fees. Because of the wide variance in salaries and days worked, each mariner's earnings will be different and no conclusion regarding the impact of the proposed fee revisions could be drawn based solely on this information.

The Draft Regulatory Assessment contains more detailed discussion of the impact of the proposed fee revisions upon the merchant marine profession, and contains comparisons with other professional licensing fees.

Summary

The Coast Guard found that the impact of the proposed revisions would vary with the financial situation of each individual mariner. However, the data suggested the financial impact of the proposed fee revisions are not significantly different from the user and licensing fees of other professions, both in terms of actual fees and as a percent of salary. The impact of the proposed fee revisions to the individual merchant mariner occurs over the phases of the document transactions at the time each transaction phase fee is paid. Absent further transactions during the document's 5-year period of validity, no other payments would be necessary until the renewal of the document.

The Coast Guard understands that the proposed fee revisions may represent only one of several expenses incurred by the individual mariner when acquiring a Coast Guard license, COR, or MMD. Within the marine professions and trades, the fees for MMLD transactions have essentially become part of the overall cost associated with working in the industry.

The Coast Guard invites public comment or data relating to the impact of the proposed fees upon the different categories of license, COR, and MMD holders.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The fee revisions in this proposed rule will impact the individual mariner, which for the most part will not affect small entities. However, some license holders both own and operate their vessels as small businesses. For those individuals, this proposed rule has small entity implications.

The Coast Guard estimates that few sole proprietors working as towing vessel operators, offshore supply vessel operators, and mobile offshore drilling unit operators. However, we believe that there are a number of sole proprietors in the small passenger vessel industry. After contacting the National Association of Charter Boat Operators and the Passenger Vessel Association, we estimate that 90 percent of the approximately 5,600 inspected and 480 uninspected small passenger vessels may operate in this fashion.

As a business, sole proprietors can claim their licensing and documentation user fees as a business expense for tax purposes and many can, pass along the expense of the licensing fees to the consumer in the form of higher rates. Therefore, for these reasons, the Coast Guard certifies under 5 U.S.C.(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Coast Guard's Small Business Program Manager, Danielle Wildason, telephone 202–267–1154.

Collection of Information

This proposed rule does not contain collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e (34)(a) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Revise § 10.109 to read as follows:

§ 10.109 Fees.

Use table 10.109 to determine the fees that you must pay for license and certificate of registry activities in this part:

TABLE 10.109—FEES

If you apply for—	And you need— Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
License:			
Original:			
Upper level	$115	$110	$5
Lower level	115	95	45
Raise of grade	100	45	45
Modification or removal of limitation or scope	50	45	45
Endorsement(s)	50	45	45
Renewal	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue/Replacement/Duplicate	n/a	n/a	45 [1]
Radio Officer License:			
Original	65	n/a	45
Endorsement(s)	50	45	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Reissue/Replacement/Duplicate	n/a	n/a	45 [1]
Certificate of Registry:			
Original (MMD holder)	105	n/a	45
Original (MMD applicant)	120	n/a	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Endorsement(s) (§ 10.809 for Marine physician assistant or Hospital corpsman)	n/a	n/a	45
Reissue/Replacement/Duplicate	n/a	n/a	45 [1]

[1] Duplicate for document lost as result of marine casualty—No Fee.

§ 10.209 [Amended]

3. In § 10.209(e)(4), remove the symbols ''§§'' and add, in its place, the word ''tables'.

§§ 10.205, 10.207, 10.209, 10.217, and 10.219 [Amended]

4. In addition to the amendments set forth above, in 46 CFR part 10, remove the word ''§ 10.109'' and add, in its place, the words ''table 10.109'' in the following places:

(a) Section 10.205(a);

(b) Section 10.207(a);

(c) Section 10.209(a)(1), (e)(3)(i)(A), (e)(4), and (f);

(d) Section 10.217((a)(1) and (a)(2); and

(e) Section 10.219(c).

PART 12—CERTIFICATION OF SEAMEN

5. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

6. Revise § 12.02–18 to read as follows:

§ 12.02–18 Fees.

(a) Unless otherwise specified in this part, use table 12.02–18 to determine the fees that you must pay for merchant mariner document activities.

(b) Unless otherwise specified in this part, when two documents are processed on the same application—

(1) *Evaluation Fees.* If a merchant mariner document transaction is processed on the same application as a license or certificate of registry transaction, only the license or certificate of registry evaluation fee will be charged;

(2) *Examination Fees.* If a license examination under part 10 also fulfills the examination requirements in this part for a merchant mariner document, only the fee for the license examination is charged; and

(3) *Issuance Fees.* A separate issuance fee will be charged for each document issued.

(c) Unless otherwise directed, the prescribed fee must be paid as follows:

(1) If an evaluation fee, at the time of application.

(2) If an examination fee, prior to taking the first examination section at a Regional Examination Center. For examinations administered at locations other than a Regional Examination Center, the examination fee must be received by the Regional Examination Center at least 1 week in advance of the scheduled examination date.

(3) If an issuance fee, prior to receiving the document.

(d) Prescribed fees must be paid by one of the following options:

(1) *Mail-in.* Payment by check or money order only, made payable to—

(i) U.S. Coast Guard;

(ii) U.S. Government;

(iii) U.S. Treasury; or

(iv) U.S. Department of Transportation.

(2) Fee payment must be made by check or money order for the exact amount of the fee. Each check or money order must include the applicant's (payor's) social security number.

(3) *In-person.* Fee payment will be accepted by cash, check, or money order at Coast Guard units where Regional Examination Centers are located. Where an applicant makes payment by cash, payment must be in the exact amount.

(e) The following applies to anyone failing to pay a fee or charge established under this subpart:

(1) Anyone who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(2) The Coast Guard may assess additional charges to a mariner to recover collection and enforcement costs associated with delinquent payments of, or failure to pay, a fee. Coast Guard documentation services may also be withheld from anyone pending payment of outstanding fees owed to the Coast Guard for services already provided by Regional Examination Centers.

TABLE 12.02–18—FEES

If you apply for—	And you need—		
	Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
Merchant Mariner Document:			
Original:			
Without endorsement	$110	n.a	$45
With endorsement	110	$140	45
Endorsement for qualified rating	95	140	45
Upgrade or Raise in Grade	95	140	45
Renewal without endorsement for qualified rating	50	n/a	45
Renewal with endorsement for qualified rating	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue/Replacement/Duplicate	n/a	n/a	[1] 45
Other Transactions:			
Duplicate Continuous Discharge Book	n/a	n/a	10
Duplicate record of sea service	n/a	n/a	10
Copy of certificate of discharge	n/a	n/a	10

[1] Duplicate for document lost as result of marine casualty—No Fee.

§ 12.02–27 [Amended]

7. In § 12.02–27(e)(4) and (f), remove the symbols ''§§'' and add, in its place, the word ''tables''.

§§ 12.02–23 and 12.02–27 [Amended]

8. In addition to the amendments set forth above, in 46 CFR part 12, remove the word ''§ 12.02–18'' and add, in its place, the words ''table 12.02–18'' in the following places:

(a) Section 12.02–23(b) and (c)(2);

(b) Section 12.02–27(a)(1), (e)(3)(i)(A), (e)(4), and (f).

Dated: March 24, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

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Part VII

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines and Peaches Grown in California; Revision of Handling and Reporting Requirements for Fresh Nectarines and Peaches; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV98–916–1 IFR]

Nectarines and Peaches Grown in California; Revision of Handling and Reporting Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling and reporting requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 1998 season shipments. This rule modifies requirements for placement of Federal-State Inspection Service lot stamps, as well as establishing a single due date for handlers' shipment reports. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits. This rule also corrects the address of the California Tree Fruit Agreement.

DATES: Effective April 1, 1998; comments received by June 1, 1998 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on December 4, 1997, and unanimously recommended that these handling requirements be revised for the 1998 season, which begins April 1. The changes: (1) correct the address for the California Tree Fruit Agreement (CTFA); (2) modify the lot stamping requirements; (3) establish a single date by which handlers must file shipment reports; (4) define and provide dimensions for a new container; (5) simplify size marking requirements for consumer packages and establish marking requirements for the new container; (6) modify weight counts for early varieties; (7) authorize shipments of ''CA Utility'' quality fruit during the 1998 season; (8) standardize container tolerances for mature and well-matured nectarines; (9) revise varietal maturity and size requirements to reflect recent changes in growing conditions; and (10) revise the names of some patented nectarine varieties to reflect the name changes made by the patent holders.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 1998 crop will be similar in size and characteristics to the 1997 crop which totaled 20,533,760 boxes of nectarines and 19,882,584 boxes of peaches.

Communications (Peaches)

Section 917.110 of the peach order's rules and regulations provides an address for communications to the CTFA. The Control Committee of Order 917 provides administrative services for the NAC and PCC. The CTFA is the name used to describe this administrative staff.

The CTFA moved its offices from Sacramento to Reedley, California, thereby making the address published in this section no longer accurate. For that reason, the PCC recommended that the address for the Control Committee be changed to reflect the current location of the CTFA's offices.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that containers of nectarines and peaches be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and prior to shipment to show that the fruit has been inspected. Such requirements apply to all containers of nectarines or peaches unless such containers are loaded directly into railway cars or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, but control of the lot stamps is retained by the inspector assigned to each handler's packing facility. Handlers with full-time inspectors have full-time access to the lot stamp, thus ensuring that each container of nectarines and/or peaches is stamped as required. Handlers without a full-time inspector have access to the lot stamp only when the inspector is on the premises. Thus, containers packed and placed on pallets in the inspector's absence can be stamped only after the inspector returns and performs an inspection on samples of those containers. However, a new container configuration on the 40 by 48 inch metric pallet is increasingly utilized by the industry. When the new containers are stacked on the standardized pallet, the result is a nine-column configuration of stacked containers; i.e., eight outer columns surrounding a ninth, center column. The center column of containers in that configuration cannot easily be marked with the lot stamp upon the return and approval of the inspector since a portion of the outer columns have to be unstacked from the pallet to expose the containers comprising the center column. After the containers in the center column are marked with the lot stamp, the containers comprising the outer columns must be restacked on the pallet. This unstacking and restacking of containers in an effort to mark the center column of containers with the lot stamp is time-consuming and increases the handler's costs. This cost is borne solely by smaller handlers who do not pack a sufficient number of containers in a day to require the presence of a full-time inspector.

In an effort to decrease handling time and costs for smaller handlers, the NAC and PCC voted unanimously to exempt the containers in the center column of the nine-column configuration from the requirement for a Federal-State Inspection Service lot stamp. This exemption is currently estimated to affect fewer than 10 handlers and less than 10,000 boxes of nectarines and peaches, or approximately .6 percent of handlers and less than .001 percent of the total boxes of nectarines and peaches inspected during the 1997 season. Exempting containers in this center column should still meet the intent of the orders' stamping requirements by allowing buyers and the inspection service to positively identify each inspected lot.

Reporting Procedures

Sections 916.60 and 917.50 of the orders require shipment reports from nectarine and peach handlers to be submitted to the respective committees. Sections 916.160(b) and 917.178(b) of the orders' rules and regulations currently require that handlers report shipments of each nectarine and peach variety by the tenth day of the month following the month the varieties were shipped.

Handlers file approximately three shipment reports with the committees per season, resulting in approximately 750 shipment reports for nectarine handlers and approximately 900 shipment reports for peach handlers. Each shipment report is estimated to take one hour for handlers to complete.

In an effort to make reporting less burdensome to handlers, the NAC and PCC voted unanimously to establish a single reporting deadline of November 15 of each year, no matter when shipments of each nectarine or peach variety were made. This single reporting deadline simplifies the reporting requirements so that handlers need only file one report each for nectarine varieties and for peach varieties at the end of the season rather than numerous reports providing the shipments of individual nectarine and peach varieties during the season. This relaxation is estimated to reduce burden hours for nectarine handlers to approximately 250 hours from 750 hours and for peach handlers to approximately 300 from 900 hours.

Container Requirements

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, provide authority to fix the size, capacity, weight, dimensions, markings, or pack of containers that may be used in the packaging and handling of these fruits. Sections 916.350 and 917.442 of the orders' rules and regulations specify container and pack requirements for nectarine and peach shipments. In part, the container requirements specify the dimensions of the boxes commonly used by handlers of nectarines and peaches. In recent years, to realize efficiencies in utilizing space, the produce industry has standardized shipment and storage of produce on a pallet measuring 40 by 48 inches. With the adoption of this pallet, some of the boxes commonly utilized by nectarine and peach handlers are being replaced by boxes which more readily conform to the new, standardized pallet. One box that is used more frequently is the No. 32 standard box, which measures 5¾ to 7¼ inches (inside dimensions) by 12 inches by 19–¾ inches (outside dimensions). This box is commonly referred to as the ''shoebox'' because of its distinctive shape. The NAC and PCC believe that new boxes, such as the No. 32, will become increasingly important to the industry because of their widespread acceptance by retailers and their use in conjunction with the standardized pallet. For those reasons, the NAC and PCC voted unanimously to include the definition and dimensions of the No. 32 standard box within the orders' rules and regulations.

Use of the No. 32 standard box has also become interchangeable with the No. 22D standard box. In part, this is because the capacity of the two containers is similar, so handlers can pack the same number of fruit of a particular size in either box. For that reason, §§ 916.350 and 917.442 of the orders' rules and regulations are modified to specify that sizes of fruit shall be based on the number that can be packed in accordance with the requirements of standard pack in either a No. 32 standard box or a No. 22D standard lug box.

Sections 916.350 and 917.442 of the orders' rules and regulations also require containers to be marked with certain information, including the size and/or number of pieces of fruit in the container, the name of the variety, if known, the maturity, and the name and address of the shipper. Because the No. 32 standard box is also currently the principal container used for molded forms (tray packs), the No. 32 box has now become the industry standard for determining the sizes in tray-pack packages. Thus, requiring markings for both the size and count of fruit in this container is not necessary. For example, if a No. 32 box is marked ''80 size,'' the buyer already knows it contains 80 pieces of ''size 80'' fruit because the number of fruit that fit in standard pack configuration is the basis for the size designation.

Another packaging style whose use has become increasingly widespread is the one-layer consumer package. Consumer packages of nectarines and peaches are smaller boxes or bags of fruit suited for display and sale as single units in some retail outlets. Consumer packages of nectarines and peaches are generally smaller units without adequate space on the outside ends for additional markings. Requiring dual markings on consumer boxes would place a burden on handlers who prefer to minimize markings on the outside of these boxes.

Thus, No. 32 boxes and consumer packages are required to be marked with either the size of the fruit, e.g., ''88 size'' or ''80 size,'' or the count, e.g., ''88 count'' or ''80 count,'' but not both, eliminating the requirement for dual markings on these containers. This is consistent with the rules and regulations of the orders and with historical practices within the nectarine and peach industry.

Sections 916.350 and 917.442 of the orders' rules and regulations also specify in Table 1 of paragraphs (a)(4)(iv) of §§ 916.350 and 917.442 the tray pack size designations which must be marked on containers of nectarines or peaches, respectively, depending on the size of the fruit. The weight-count size designations specify the maximum number of nectarines or peaches in a 16-pound sample for each tray-pack size designation. This rule revises §§ 916.350 and 917.442 by modifying the weight counts of early-season fruit sizes 56 to 72 in Table 1 of those paragraphs.

According to the information provided by a handler of early-season nectarines and peaches, increasing amounts of early-season nectarines and peaches are currently being converted to volume-filled containers from the traditional tray packs. Early-season nectarines and peaches lack the density of mid-season and late-season fruit, while maintaining overall size. For this reason, early-season nectarines and peaches may adequately fill the tray-pack container molded forms; but, when converted to volume-filled containers without the molded forms, the early-season fruit lacks the weight to adequately meet the requirements of a 16-pound sample. In the past, the handler was required to include an additional nectarine or peach in the 16-pound sample to meet the required sample weight for five sizes of nectarines and peaches when the tray-pack container is converted to the volume-filled container. This results in lower returns for the producer and handler of early-season fruit sold in volume-filled containers. The NAC and PCC unanimously recommended modifications to the early-season weight-count standards for five sizes of nectarines and peaches by the addition of one piece of fruit to each weight-count standard currently in effect for sizes 56 to 72. Such a change modifies Table 1 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 by adding an additional nectarine or peach, respectively, to sizes 56, 60, 64, 70, and 72. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers and decrease the handling costs associated with that conversion.

Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not ''serious damage.''

This rule revises § 916.350, § 916.356, § 917.442, and § 917.459 to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 1998 season. (''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting ''CA Utility'' quality requirements were permitted during the 1996 and 1997 seasons only.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. Shipments of ''CA Utility'' nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of ''CA Utility'' nectarines represented 1.1 percent of all nectarines shipments, or approximately 230,000 boxes. Shipments of ''CA Utility'' peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of ''CA Utility'' peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes.

For these reasons, the NAC and PCC unanimously recommended that shipments of ''CA Utility'' quality nectarines and peaches, respectively, be permitted for the 1998 season with a continuing in-house statistical review.

Clarification of Container Tolerances (Nectarines)

As previously indicated, the orders require that, except for ''CA Utility'' quality fruit, nectarines and peaches meet most of the requirements of the U.S. No. 1 grade. These requirements include the requirement that such fruit is ''mature.'' (''CA Utility'' fruit is also required to be ''mature.'') A second, higher maturity standard of ''well matured'' is also defined in the rules and regulations for both nectarines and peaches.

For those grade factors included in the U.S. Standards for Grades of Nectarines and for Grades of Peaches (standards), tolerances are provided for fruit that fail to meet those factors to allow for variations incident to proper grading and handling. Tolerances are specified for both entire lots of fruit and for individual containers within the lot. These tolerances may be modified by the orders' rules and regulations.

On December 4, 1997, the NAC recommended a nectarine container tolerance of one and one-half times the lot tolerance in instances where the lot tolerance was 10 percent or more, and a nectarine container tolerance of twice the lot tolerance in instances where the lot tolerance was 9 percent or less. This nectarine container tolerance will be identical to that currently in effect for peaches. This standardization of container tolerances between nectarines and peaches should benefit handlers of both fruits. These tolerances are specified in a revised paragraph (c) of § 916.356.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is ''mature'' as defined in the standards. Additionally, both orders'' rules and regulations provide for a higher, ''well matured'' classification. For most varieties, ''well-matured'' fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the individual characteristics of each variety. These maturity guides established under the handling regulations of the California tree fruit

marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 1998 handling regulation are the same as those that appeared in the 1997 handling regulation with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for 2 nectarine varieties. Specifically, Shipping Point Inspection (SPI) recommended adding maturity guides for the June Brite nectarine variety at a maturity guide of I; and the Diamond Ray nectarine variety at a maturity guide of L.

The NAC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine varieties in production.

Table 1 of paragraph (a)(1)(iv) of § 916.356 is also revised to remove 15 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 15 of the nectarine varieties currently listed in the maturity guide have not been in production since the 1995 season. Typically, the NAC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Ama Lyn, Del Rio Rey, Gold King, Grand Stan, June Grand, Kent Grand, Le Grand, Red June, Regal Grand, Sierra Star/181–119, Spring Grand, Spring Top, Star Bright, Star Grand, and Tasty Free nectarine varieties.

In addition, the 61–61 nectarine variety is removed from all variety-specific regulations, including the requirement for 80 percent surface color, as specified in § 916.350. Similarly, the Fairlane nectarine variety is removed. The varieties will be regulated at the requirement for 90 percent surface color. With the removal of the Fairlane and 61–61 nectarine varieties, the Tom Grand nectarine variety will remain as the only variety regulated at the requirement for 80 percent surface color.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being ''well matured.''

This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for 2 peach varieties. Specifically, SPI recommended adding the maturity guides for the Rich Mike peach variety to be regulated at the H maturity guide, and the August Lady peach variety to be regulated at the L maturity guide.

The PCC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for peach varieties in production.

Table 1 of paragraph (a)(1)(iv) of § 917.459 is also revised to remove 7 peach varieties which are no longer in production. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most recent review revealed that 7 of the peach varieties currently listed in the maturity guide have not been in production since the 1995 season. Typically, the PCC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Cardinal, Early Coronet, July Lady, Kearney, May Lady, Prime Crest, and Redglobe peach varieties.

Size Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer. This increased growing time not only improves the size of the fruit, but also increases its maturity. Increased size also results in an increased number of packed boxes of nectarines or peaches per acre. Acceptable size fruit also provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to producers and handlers. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for 10 nectarine varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1997 season. This rule also modifies the variety-specific size requirements for 3 varieties of nectarines.

For example, one of the varieties recommended for addition to the variety-specific size requirements is the Brite Pearl variety. Studies of the size ranges attained by the Brite Pearl variety revealed all of the nectarines of the Brite Pearl variety met sizes 40, 50, 60, 70, and 80. While the size distribution peaked on the size 60, 100 percent of the fruit sized at a minimum of size 80.

A review of other varieties with the same harvesting period indicated that Brite Pearl was also comparable to those varieties in its size ranges. Thus, the recommendation to place the Brite Pearl nectarine variety in the variety-specific size regulation at a size 80 is appropriate. Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers of the varieties affected are invited to comment when such size recommendations are deliberated.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Diamond Bright, June Pearl, Prima Diamond IV, and Prima Diamond XIII nectarine varieties; and the introductory text of paragraph (a)(6) in § 916.356 is revised to include the August Snow, Brite Pearl, Crystal Rose, Fire Pearl, Prima Diamond XIX, and Prima Diamond XXIV nectarine varieties.

This rule also revises the introductory text of paragraph (a)(6) of § 916.356 to remove 3 nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1997 season. Thus, the introductory text of paragraph (a)(6) is revised to remove the Bob Grand, Kism Grand, and 80P–1135 nectarine varieties.

This rule also revises the introductory text of paragraph (a)(4) of § 916.356 to modify the identification of the Prima Diamond II nectarine variety; and revises the introductory text of paragraph (a)(6) of § 916.356 to modify the identification of the Prima Diamond IV, Prima Diamond VII, Prima Diamond VIII, and 424–195 nectarine varieties. The names have been changed as follows: Prima Diamond II has been

changed to Prima Diamond IV, Prima Diamond IV has been changed to Prima Diamond IX, Prima Diamond VII has been changed to Prima Diamond XVI, Prima Diamond VIII has been changed to Prima Diamond XVIII, and 424–195 has been changed to Late How Red, respectively. Such changes are done routinely when the holder of a patented variety of nectarines changes the variety's name. For that reason, all references to these varieties have been changed.

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(5), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific size requirements for 10 peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1997 season. This rule adds one paragraph to § 917.459(a), and redesignates the other paragraph numbers. Current paragraphs (a)(2), (a)(3), (a)(4), (a)(5) are redesignated as paragraphs (a)(3), (a)(4), (a)(5), and (a)(6), while a new paragraph (a)(2) is added. Paragraph (a)(2) of § 917.459 is used to regulate peaches at a minimum size 96. A conforming change is required at paragraphs (b) and (c) which refer to these redesignated paragraphs.

One of the varieties recommended for addition to the variety-specific size requirements is the Spring Snow variety. Studies of the size ranges attained by the Spring Snow variety revealed that none of that variety met the smallest sizes, sizes 96, 88, and 84. While the size distribution peaked on size 50, the minimum size encompassing 100 percent of the variety was size 80.

A review of other varieties of the same harvesting period indicated that Spring Snow was also comparable to those varieties in its size ranges. Thus, the recommendation to place the Spring Snow peach variety in the variety-specific size regulation at a size 80 is appropriate. Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated.

In § 917.459 of the order's rules and regulations, paragraph (a)(2) is added to include the Earlitreat and Lady Sue peach varieties to be regulated at a minimum size 96. The introductory text of paragraph (a)(5) is revised to include the Pink Rose, Prima Peach IV, Spring Snow, and White Dream peach varieties; and the introductory text of paragraph (a)(6) is revised to include the Madonna Sun, Prima Peach VIII, Prima Peach 20, and Saturn (Donut) peach varieties.

This rule also revises § 917.459 to remove 6 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of this variety were produced during the 1997 season. In § 917.459, the introductory text of paragraph (a)(5) is revised to remove the June Sun, Kingscrest, Kings Red, and Snow Flame peach varieties. The introductory text of paragraph (a)(6) of § 917.459 is revised to remove the Prima Lady and Snow Ball peach varieties.

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department has determined that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined as those whose annual receipts are less than $5,000,000. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This rule revises current requirements to: (1) correct the address for the CTFA; (2) modify the lot stamping requirements; (3) establish a single date by which handlers must file shipment reports; (4) define and provide dimensions for a new container; (5) simplify size marking requirements for the new container; (6) modify weight counts for early varieties; (7) authorize shipments of ''CA Utility'' quality fruit during the 1998 season; (8) standardize container inspection tolerances for mature and well-matured nectarines; (9) revise varietal maturity and size requirements to reflect recent changes in growing conditions; and (10) revise names of some patented nectarine and peach varieties consistent with name changes made by patent holders.

In § 917.110 of the peach order's rules and regulations, the address of the CTFA is listed for various communications (reports, applications,

submittals, requests, etc.). However, since the rule was published, the CTFA moved its offices from Sacramento to Reedley, California. Updating the address of the CTFA is a clarifying change which will have no practical impact on producers or handlers.

In §§ 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, handlers are required to stamp containers of nectarines and peaches with the Federal-State Inspection Service lot stamp number after inspection and prior to shipment. Such a requirement is relatively easy and cost effective for larger handlers who pack sufficient numbers of containers in a day to warrant the presence of a full-time inspector who maintains control of the handler's lot stamp. However, for smaller handlers who do not pack sufficient numbers of containers in a day to warrant the presence of a full-time inspector assigned to their facility, the requirement for a lot stamp creates an unnecessary burden of increased packing time and costs. Containers packed and placed on pallets in the inspector's absence must be stamped after the inspector returns and performs an inspection on samples of those containers. The increased use of new container styles and a standardized pallet has created a nine-column configuration of stacked containers consisting of eight columns surrounding a ninth, center column. The center column is difficult to mark with the lot stamp since a portion of the other eight columns must be unstacked to allow access to the center column. Exempting the containers in the center column of the nine-column configuration from lot stamp marking requirements will decrease handling time and costs for smaller handlers who have only intermittent inspections in a day. This change should have a positive impact on the affected handlers. This exemption is currently estimated to affect fewer than 10 handlers and less than 10,000 boxes of nectarines and peaches.

In §§ 916.160 and 917.178 of the orders' rules and regulations, handlers are required to report shipments of each nectarine and peach variety, respectively, not later than the tenth day of the month following the month in which the varieties were shipped. Currently, handlers file approximately three shipment reports with the committees per season, resulting in approximately 750 shipment reports for nectarine handlers and approximately 900 shipment reports for peach handlers. Each shipment report is estimated to take one hour for handlers to complete. In an effort to make reporting less burdensome to handlers, the NAC and PCC recommended the establishment of a single date as a reporting deadline, no matter when shipments of each nectarine or peach variety were made. This single reporting deadline simplifies the reporting requirements so that handlers need only file one report each for nectarine and peach shipments upon conclusion of the handling season. This is a relaxation of the reporting requirements and burden for the benefit of handlers. This relaxation is estimated to reduce burden hours for nectarine handlers to approximately 250 hours from 750 hours and for peach handlers to approximately 300 from 900 hours.

In §§ 916.350 and 917.442 of the rules regulating nectarines and peaches, respectively, several container types are identified by a name, such as 12B or 22G, and then further defined by their dimensions and weight-holding capacities. This rule defines and describes a new container, the No. 32 (shoebox), which is more easily configured to fit a standard 40 by 48 inch pallet. Both the container and the pallet are increasingly utilized by the industry because they are favored by retailers. The addition of this container to the orders' rules and regulations provides increased flexibility for handlers by providing yet another approved container for shipments of nectarines and peaches.

Sections 916.350 and 917.442 of the orders' rules and regulations require specified container markings. To facilitate the use of the No. 32 standard box and consumer packages, these container marking requirements are clarified by referencing the containers and simplified by eliminating one marking requirement for use on these containers. Eliminating the dual marking requirement will ease the burden on handlers.

Consumer packages of nectarines and peaches are smaller boxes without adequate space on the outside ends for marking both the fruit size and count of fruit in the box. The No. 32 box has become the industry standard for tray-pack arrangements. Including both the size and count of fruit on these containers would be unnecessary since the number of fruit in the box is also the size of the fruit in the box. Requiring dual markings on these two boxes would place a burden on handlers who prefer to minimize markings on the outside of the boxes. Such markings on the outside of the boxes would be either the size of the fruit, e.g., ''88 size'' or ''80 size,'' or the count, e.g., ''88 count'' or ''80 count,'' but not both, eliminating the requirement for dual markings on these containers. This is consistent with the rules and regulations of the orders and is a relaxation of the marking requirements.

In §§ 916.350 and 917.442 of the orders' rules and regulations concerning nectarines and peaches, respectively, the use of container markings is specified. Container markings based on weight standards differ for early-season nectarines and peaches, compared to those marketed later in the season. The NAC and PCC routinely conduct tests to determine the optimum weight-count standards for such early-season, mid-season, and late-season nectarines and peaches, respectively. Acting upon information from a handler of early-season nectarines and peaches, the NAC and PCC have determined that while early-season nectarines and peaches frequently attain a size to adequately fill the molded forms when tray-packed, early-season nectarines and peaches are not as dense as mid-season and late-season nectarines and peaches, and thus, fail to meet the current weight standards set for specified sizes when converted to volume-filled containers. When such tests were performed by the NAC and PCC in 1994 and 1995, early-season nectarines and peaches were not predominately packed in volume-filled containers. More commonly, early-season nectarines and peaches were packed in tray-packs. As the practice of converting tray-packed containers of early-season nectarines and peaches to volume-filled containers has increased, more information about the characteristics of early-season nectarines and peaches has come to light. Thus, the NAC and PCC have determined that the weight-count standards for five early-season nectarine and peach sizes need to be adjusted by adding one piece of fruit to the 16-pound sample of fruit of these sizes to accommodate volume-filled container shipments to the benefit of producers and handlers.

Therefore, the NAC and PCC unanimously recommended modifications to the early-season weight-count standards for five sizes of nectarines and peaches by the addition of one piece of fruit to each weight-count standard currently in effect for sizes 56 to 72. Such a change modifies TABLE 1 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations by adding an additional nectarine or peach, respectively, to sizes 56, 60, 64, 70, and 72. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers and decrease

the handling costs associated with that conversion.

In §§ 916.350 and 917.442 of the orders regulating nectarines and peaches, respectively, lower-quality nectarines and peaches were authorized for shipment as ''CA Utility'' as an experiment for the 1996 season only. Such authorization was continued during the 1997 season. This rule permits the continued use of ''CA Utility'' quality fruit for the 1998 season with a continued in-house statistical review to be conducted by the NAC and PCC. During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were 210,443 boxes of nectarines and 365,761 boxes of peaches packed as ''CA Utility,'' or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were 230,275 boxes of nectarines and 216,562 boxes of peaches packed as ''CA Utility,'' or 1.1 percent and 1.0 percent of fresh shipments, respectively. Continued availability of ''CA Utility'' quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

This rule also standardizes the container tolerances for nectarines, with those currently in effect for peaches. Thus, the revision of the container tolerance for nectarines simplifies handling requirements for the industry.

Sections 916.356 and 917.442 of the orders' rules and regulations for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule makes annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips), as reviewed by SPI. Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

Currently, in § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 1998 season. Minimum size regulations are put in place to allow fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases the number of packed boxes per acre. Increased fruit size and maturity also provide greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

This action does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, this action will reduce the reporting requirements and burden by allowing handlers to file only one report each for nectarine and peach shipments upon conclusion of the handling season. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in Parts 916 and 917 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0072 and 0581–0080, respectively.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually during the first week of December. Like all committee meetings, the December 4, 1997, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to begin about April 1; (2) this rule relaxes grade requirements for nectarines and peaches and size requirements for several nectarine and peach varieties;

(3) California nectarine and peach handlers are aware of these revised requirements recommended by the committees at public meetings, and they will need no additional time to comply with such requirements; and (4) the rule provides a 60-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.115 is revised to read as follows:

§ 916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55.

3. Section 916.160, paragraph (b) is revised to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(b) *Recapitulation of shipments.* Each shipper of nectarines shall furnish to the manager of the Nectarine Administrative Committee not later than November 15 of each year a recapitulation of shipments of each variety shipped during the just-completed season. The recapitulation shall show: The name of the shipper, the shipping point, the district of origin, the variety, and the number of packages, by size, for each container type.

§ 916.350 [Amended]

4. Section 916.350 is amended by:

(A) Revising paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii);

(B) Revising Table 1 in paragraph (a)(4)(iv);

(C) Revising paragraph (a)(5);

(D) Revising paragraph (b); and

(E) Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(4) * * *

(i) The size of nectarines packed in molded forms (tray-packs) in the No. 22D and the No. 32 standard boxes, cartons, or consumer packages; No. 22G standard lug boxes, cartons; or the No. 12B fruit (peach) boxes or flats; and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as ''80 count,'' ''88 count,'' etc.

(ii) The size of nectarines in molded forms (tray-packs) in the No. 22G standard lug boxes shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc., along with count requirements in paragraph (a)(4)(i) of this section.

(iii) The size of nectarines loose-filled or tight-filled in any container shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D or No. 32 standard lug box in accordance with the requirements of standard pack, such ''80 size,'' ''88 size,'' etc.

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
108	100
96	90
88	83
84	78
80	75
72	68
70	61
64	56
60	50
56	47
54	40
50	39
48	35
42	31
40	30
36	25
34	23
32	22
30	19

* * * * *

(5) Each No. 22D standard lug box, No. 22G standard lug box, or No. 32 standard box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words ''25 pounds net weight.''

* * * * *

(b) As used in this section, ''standard pack'' and ''fairly uniform in size'' shall have the same meaning as set forth in the U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛ x 13½ x 16⅛ inches, No. 22E standard lug box measures 8¾ x 13½ x 16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½ x 13¼ x 15⅞ inches, No. 32 standard box measures 5¾ to 7¼ x 12 x 19¾ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions). ''Individual consumer packages'' means packages holding 15 pounds or less net weight of nectarines. ''Tree ripe'' means ''tree ripened'' and fruit shipped and marked as ''tree ripe,'' ''tree ripened,'' or any similar terms using the words ''tree'' and ''ripe'' must meet the minimum California Well Matured standards.

* * * * *

(d) During the period April 1 through October 31, 1998, each container or package when packed with nectarines meeting the CA Utility requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters of ¾ inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as ''CA Utility'' along with other required markings.

* * * * *

5. Section 916.356 is amended by:

A. Revising paragraph (a)(1) introductory text;

B. Revising paragraph (a)(1)(iv) and Table 1 to paragraph (a)(1)(iv);

C. Revising paragraphs (a)(2)(i), (a)(3)(i), (a)(4) introductory text, (a)(4)(i), (a)(5)(i), (a)(6) introductory text,(a)(6)(i), (a)(7)(i), (a)(8)(i), and (a)(9)(i); and

D. Revising paragraph (c) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided,* That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further,* That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further,* That all varieties of nectarines which fail to meet the U.S.

No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further,* That during the period April 1 through October 31, 1998, any handler may handle nectarines if such nectarines meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade and that such nectarines are mature and are:

* * * * *

(iv) The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 to Paragraph (a)(1)(iv) in making maturity determinations for the specified varieties when inspecting to the ''well matured'' level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Tom Grand variety of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table 1 to paragraph (a)(1)(iv) may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of ''well matured.''

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A variety	Column B maturity guide
Alshir Red	J
Apache	G
April Glo	H
Arm King	B
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Bob Grand	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Grand Diamond	L
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Maybelle	F
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Mike Grand	H
Moon Grand	L
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Son Red	L
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Gold	H
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(2) * * *

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the box; or

* * * * *

(3) * * *

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Early May, June Brite, Juneglo, June Pearl, Kay Glo, May Diamond, May Grand, May Lion, Pacific Star, Prima Diamond IV, Prima Diamond VI, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

* * * * *

(5) * * *

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a

standard pack, not more than 84 nectarines in the box; or

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Flame Glo, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, Honey Kist, How Red, July Red, Kay Diamond, King Jim, Late How Red, Late Red Jim, Mid Glo, Moon Grand, Niagara Grand, P-R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XVIII, Prima Diamond XXIV, Prima Diamond XIX, Red Diamond, Red Fred, Red Free, Red Glen, Red Jim, Rio Red, Royal Giant, Ruby Diamond, Ruby Grand, Scarlet Red, September Grand, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Summer Star, Sunburst, Sun Diamond, Super Star, or Zee Glo variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the box, or if the nectarines are ''well matured,'' not more than 84 nectarines in the box; or

* * * * *

(7) * * *

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

* * * * *

(8) * * *

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

* * * * *

(9) * * *

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the box or, if the nectarines are ''well matured,'' not more than 84 nectarines in the box; or

* * * * *

(c) *Container tolerances.* The contents of individual packages in the lot are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified in this part:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages shall have not more than double the tolerance specified.

(2) For packages which contain 10 pounds or less, individual packages are not restricted as to the percentages of defects.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

6. Section 917.110 is revised to read as follows:

§ 917.110 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, or a particular commodity committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed as follows:

Control Committee, California Tree Fruit Agreement, P.O. Box 968, Reedley, CA, 93654–0968.

7. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, all exposed or outside containers of peaches, but not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 917.45.

8. Section 917.178, paragraph (b) is revised to read as follows:

§ 917.178 Peaches.

* * * * *

(b) *Recapitulation of shipments.* Each shipper of peaches shall furnish to the manager of the Control Committee not later than November 15 of each year a recapitulation of shipments of each variety shipped during the just-completed season. The recapitulation shall show: The name of the shipper, the shipping point, the district of origin, the variety, and the number of packages, by size, for each container type.

9. Section 917.442 is amended by:

(A) Revising paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii);

(B) Revising Table 1 in paragraph (a)(4)(iv);

(C) Revising paragraph (a)(6);

(D) Revising paragraph (b); and

(E) Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(4) * * *

(i) The size of peaches packed in molded forms (tray-packs) in the No. 22D and No. 32 standard boxes, cartons, or consumer packages; No. 22G standard lug boxes, experimental containers, cartons; or No. 12B fruit (peach) boxes or flats; and the size of wrapped peaches packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of peaches in each container, such as ''80 count,'' ''88 count,'' etc.

(ii) The size of peaches in molded forms in experimental containers shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc., along with the count requirements in paragraph (a)(4)(i) of this section.

(iii) The size of peaches loose-filled or tight-filled in any container shall be indicated according to the number of such peaches when packed in molded forms in No. 22D or No. 32 standard boxes, in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc.

(iv) * * *

TABLE 1—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A [1]	Column B [2]
96	96
88	92
84	83
80	76
72	69
70	65
64	57

TABLE 1—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A [1]	Column B [2]
60	51
56	47
54	44
50	39
48	35
42	31
40	30
36	27
34	25
32	23
30	21

[1] Tray Pack Size Designation.

[2] Maximum Number of Peaches in a 16-pound Sample Applicable to Varieties Specified in Paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(iii), (a)(5)(ii), and (b)(3) of § 917.459.

* * * * *

(6) Each No. 22D standard lug box or No. 32 standard box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words ''25 pounds net weight.''

* * * * *

(b) As used in this section, ''standard pack'' and ''fairly uniform in size'' shall have the same meaning as set forth in the U.S. Standards for Grade of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures 2⅜ to 7⅛ × 11½ × 16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛ × 13½ × 16⅛ inches, No. 22E standard lug box measures 8¾ × 13½ × 16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½ × 13¼ × 15⅞ inches, No. 32 standard box measures 5¾ to 7¼ × 12 × 19¾ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions). ''Individual consumer packages'' means packages holding 15 pounds or less net weight of peaches. ''Tree ripe'' means ''tree ripened'' and fruit shipped and marked as ''tree ripe,'' ''tree ripened,'' or any similar terms using the words ''tree'' and ''ripe'' must meet the minimum California Well Matured standards.

* * * * *

(d) During the period April 1 through November 23, 1998, each container or package when packed with peaches meeting CA Utility requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters of ¾ inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as ''CA Utility'' along with other required markings.

* * * * *

10. Section 917.459 is amended by:

(A) Revising paragraph (a)(1) introductory text;

(B) Revising Table 1 to paragraph (a)(1)(iv);

(C) Redesignating paragraphs (a)(2), (a)(3), (a)(4), and (a)(5), as paragraphs (a)(3), (a)(4), (a)(5), and (a) (6), respectively, and adding a new paragraph (a)(2); and

(D) Revising newly redesignated paragraphs (a)(3)(i), (a)(5)introductory text, (a)(5)(i), (a)(6) introductory text, (a)(6)(i), and paragraph (b) introductory text, (b)(1), (c) introductory text, and (c)(1) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That during the period April 1 through November 23, 1998, any handler may handle peaches if such peaches meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade and that such peaches are mature and are:

* * * * *

(iv) * * *

Table 1 to paragraph (a)(l)(iv)

Column A—Variety	Column B—Maturity guide
Ambercrest	G
Angelus	I
August Lady	L
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Early Delight	H

Table 1 to paragraph (a)(l)(iv)—Continued

Column A—Variety	Column B—Maturity guide
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
June Sun	H
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Mary Anne	G
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prima Lady	J
Queencrest	G
Ray Crest	G
Red Cal	I
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	L
Summerset	I

Table 1 to paragraph (a)(l)(iv)—Continued

Column A—Variety	Column B—Maturity guide
Suncrest	G
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(2) Any package or container of Earlitreat or Lady Sue variety peaches unless:

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more that 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(2)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) * * *

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more that 88 peaches in the box; or

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, Honey Red, June Lady, Kern Sun, May Crest, May Sun, Merrill Gemfree, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Gem, Sweet Scarlet, or White Dream variety of peaches unless:

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more that 80 peaches in the box; or

* * * * *

(6) Any package or container of Amber Crest, August Lady, August Sun, Autumn Crest, Autumn Flame, Autumn Gem, Autumn Lady, Autumn Rose, Belmont (Fairmont), Berenda Sun, Blum's Beauty, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Fire Red, Flamecrest, John Henry, July Sun, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Madonna Sun, Mary Anne, O'Henry, Prima Gattie, Prima Peach VIII, Prima Peach 20, Red Dancer, Red Sun, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Lady, Snow Diamond, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Tra Zee, Vista, White Lady, or Zee Lady variety of peaches unless:

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box, or, if the peaches are ''well matured,'' not more than 80 peaches in the box; or

* * * * *

(b) During the period April 1 through June 30 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(1) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more that 96 peaches in the box; or

* * * * *

(c) During July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(1) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more that 80 peaches in the box; or

* * * * *

Dated: March 26, 1998

Robert C. Keeney ,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–8435 Filed 3–30–98; 8:45 am]

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Part VIII

Nuclear Regulatory Commission

10 CFR Parts 2, 140, 170 and 171
Revision of Fee Schedules; 100% Fee Recovery, FY 1998; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 140, 170 and 171

RIN 3150–AF 83

Revision of Fee Schedules; 100% Fee Recovery, FY 1998

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1998, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1998 is approximately $454.8 million. The NRC is also proposing to provide additional payment methods for civil penalties and indemnity fees, as well as annual and licensing fees.

DATES: The comment period expires May 1, 1998. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that NRC collect the FY 1998 fees by September 30, 1998, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678). Comments may also be submitted via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the NRC homepage, select ''Rulemaking'' from the tool bar. The interactive rulemaking website can then be accessed by selecting ''New Rulemaking Website''. This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail CAG@nrc.gov.

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001. Comments received may also be viewed and downloaded electronically via the interactive rulemaking website established by the NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

On April 12, 1996 (61 FR 16203), the NRC published its final rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1996, less the appropriation received from the Nuclear Waste Fund. Several changes to the fees assessed for FY 1996 were adopted by the NRC. These changes were highlighted in this final rule (61 FR 16203; April 12, 1996) and bear on the approach for establishing annual fees set forth in this proposed rule.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1998 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1998, the NRC's budget authority is $472.8 million, of which $15.0 million has been appropriated from the NWF. In addition, $3.0 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy Hanford, Washington site, and for the pilot program for the external regulation of the Department of Energy. The FY 1998 appropriation language states that the $3.0 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington site and activities associated with the pilot program for external regulation of the Department of Energy shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately $454.8 million in FY 1998 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees.

The total amount to be recovered in fees for FY 1998 is $7.5 million less than the amount estimated for recovery for FY 1997. The NRC estimates that approximately $94.6 million will be recovered in FY 1998 from fees assessed under 10 CFR Part 170 and other receipts, compared to $95.2 million in FY 1997. The remaining $360.2 million would be recovered in FY 1998 through the 10 CFR Part 171 annual fees. The total amount to be recovered through annual fees in FY 1998 is approximately $6.4 million less than in FY 1997.

In addition to the decrease in the total amount to be recovered through annual fees and the slight reduction in the estimated amount to be recovered in 10 CFR Part 170 fees, the number of licensees paying annual fees in FY 1998 has decreased compared to FY 1997. For example, Commonwealth Edison has notified the NRC that the Zion Station Units 1 and 2 ceased operations on February 13, 1998. In addition, both the Haddam Neck Plant and the Maine Yankee Plant ceased operations during FY 1997 and therefore are not subject to the FY 1998 annual fees. This is equivalent to a reduction of 2.5 power

reactors subject to the FY 1998 annual fees compared to FY 1997. The Big Rock Point Plant, a small older reactor historically granted a partial exemption from the annual fee, also ceased operations in FY 1997 and is no longer subject to annual fees.

As a result of these changes, the proposed FY 1998 annual fees would increase slightly, by 0.1 percent, compared to the FY 1997 actual (prior to rounding) annual fees. Because this is a slight increase, after rounding the proposed FY 1998 annual fees for many fee categories are the same as the final (rounded) FY 1997 annual fees. The change to the annual fees is described in more detail in Section B. The following examples illustrate the changes in annual fees:

	FY 1997 annual fee	FY 1998 proposed annual fee
Class of Licensees:		
Power Reactors	$2,978,000	$2,980,000
Nonpower Reactors	57,300	57,300
High Enriched Uranium Fuel Facility	2,606,000	2,607,000
Low Enriched Uranium Fuel Facility	1,279,000	1,280,000
UF_6 Conversion Facility	648,000	649,000
Uranium Mills	61,800	61,800
Typical Materials Licenses:		
Radiographers	14,100	14,100
Well Loggers	8,200	8,200
Gauge Users	1,700	1,700
Broad Scope Medical	23,500	23,500

Because the final FY 1998 fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1998 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1998 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 1998 rule. Those materials licensees whose license anniversary date during FY 1998 falls before the effective date of the final FY 1998 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1998 final rule would be billed at the FY 1998 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

The NRC is announcing here that it plans to discontinue mailing the final rule to all licensees. In addition to publication in the **Federal Register**, the final rule will be available on the internet at http://ruleforum.llnl.gov/.

Copies of the final rule will be mailed upon request. To obtain a copy of the final rule, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554. As a matter of courtesy, the NRC plans to continue to send the proposed rule to all licensees.

The NRC is also announcing here that it plans to reexamine the current annual fee exemption policy for licensees in decommissioning or holding possession only licenses and the annual fee policy for reactors' storage of spent fuel. Any changes to the current fee policies will be included in the FY 1999 fee rulemaking. One purpose of the study is to assure consistent fee treatment for both wet storage (i.e., spent fuel pool) and dry storage (i.e., independent spent fuel storage installations, or ISFSIs) of spent fuel. The Commission has previously determined that both storage options are considered safe and acceptable forms of storage for spent fuel. Under current fee regulations, Part 50 licensees in decommissioning who store spent fuel in the spent fuel pool are not assessed an annual fee, but licensees who store spent fuel in an ISFSI under Part 72 are assessed an annual fee. The NRC will review this policy as part of the overall study of the issues related to annual fees for licensees in decommissioning.

The NRC is also proposing to make other changes to 10 CFR Parts 170 and 171 as discussed in Sections A. and B. below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes four amendments to 10 CFR Part 170. These amendments would not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

First, the NRC proposes to revise § 170.12(g) to include the following for cost recovery:

(1) Full-cost recovery for resident inspectors.

Currently, resident inspectors' time is billed to the site to which they are assigned only if the time is reported to a specific inspection report number. The remaining costs related to the resident inspector are recovered in the annual fees assessed to all licensees in the class. Because the assignment of a resident inspector to a site is an identifiable service to a specific licensee, the NRC is proposing that all of the resident inspectors' official duty time (i.e., excluding leave) be billed to the specific licensee under Part 170. This change would be applicable to all classes of licensees having resident inspectors.

(2) Costs expended within 30 days after the issuance of an inspection report.

Section 170.12 (g) provides that costs will be assessed for completed inspections. Currently, for fee recovery purposes, an inspection is considered to be completed when the inspection report is issued. The result is that costs expended after the report is sent are recovered through the annual fees imposed on all licensees in that class.

Activities that occur after the inspection report is issued, such as follow-up on the inspection findings, are identifiable services for specific licensees. Therefore, NRC proposes to assess Part 170 fees for these services.

However, in order to establish a clear interval during which accumulated costs would be billed, the proposed change to Part 170 would recover costs from the specific licensee for activities that occur within 30 days after the issuance of the inspection report. This change would result in recovery of 80 percent of these accumulated costs under Part 170, and would continue to provide applicants and licensees with a definitive point at which billing would cease.

Second, the NRC proposes to revise § 170.12(h) to include credit cards as an additional method of payment, and to provide additional information on electronic payments. Credit card payments would be accepted for small dollar payments. Electronic payments may be made by Fedwire (a funds transfer system operated by the Federal Reserve System) or by Automated Clearing House (ACH). ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Electronic payment will not only expedite the payment process, but will also save applicants and licensees considerable time and money over a paper-based payment system.

Third, the NRC proposes that the two professional hourly rates established in FY 1997 in § 170.20 be revised based on the FY 1998 budget. These proposed rates would be based on the FY 1998 direct FTEs and the FY 1998 budget excluding direct program support and the appropriation from the NWF or the General Fund. These rates are used to determine the Part 170 fees. The NRC is proposing to establish a rate of $124 per hour ($219,901 per direct FTE) for the reactor program. This rate would be applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. A second rate of $121 per hour ($214,185 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate would be applicable to all materials activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1997 final fee rule, these rates were $131 and $125, respectively. The decrease in the hourly rates is primarily due to a change in application of the types of costs included in the hourly rates. Previously, the hourly rates were determined based on the premise that surcharge costs should be shared by those paying Part 170 fees for services as well as those paying Part 171 annual fees. The proposed hourly rates have been determined based on the principle that the surcharge costs are more appropriately included only in the Part 171 annual fee.

In addition, Section Chiefs are included as overhead in the calculation of the proposed FY 1998 hourly rates, and any specific Section Chief effort expended for reviews and inspections will not be billed to the applicant or licensee. Previously, the Section Chiefs' time for specific licensing and inspection activities were directly billed under Part 170 to the applicant or licensee. This change is consistent with the current budget structure which includes Section Chiefs as overhead.

Fourth, the NRC proposes to adjust the current Part 170 licensing fees in §§ 170.21 and 170.31 to reflect the revised hourly rates.

In summary, the NRC is proposing to:

(1) Assess Part 170 fees to recover costs for all of the resident inspectors' official duty time (i.e, excluding leave) and costs incurred within 30 days after issuance of an inspection report.

(2) Offer additional payment methods for 10 CFR Part 170 fees.

(3) Revise the two 10 CFR Part 170 hourly rates.

(4) Revise the licensing (application and amendment) fees assessed under 10 CFR Part 170 to reflect the revised hourly rates.

Although not a specific change to Part 170, the NRC also is announcing plans to change the current policy with regard to fees for activities performed during overtime. Currently only work performed during regular hours is billed to the applicants and licensees. To more fully recover costs under Part 170, the NRC plans to assess Part 170 fees for compensated overtime hours expended for activities covered by Part 170, such as reviews of applications, inspections, Part 55 exams, and special projects. The compensated overtime hours will be billed at the normal hourly rate.

In addition, the NRC is also announcing plans to bill for accumulated inspection costs prior to issuance of the inspection report under certain circumstances. Currently, as provided in 10 CFR 170.12(g), inspection costs are billed only after the inspection is completed, i.e, when the inspection report is issued. As a result, in some cases inspection costs accumulate over several billing cycles, and the licensee receives one invoice for these accumulated costs rather than being billed as the costs are expended. However, NRC plans to progress bill for inspections in selected cases where it is determined that such billing would be in the best interest of the agency and the licensee. If it is determined that the accumulated costs warrant an exception to the billing method currently provided in 10 CFR 170.12(g), NRC will coordinate with the licensee to establish a mutually agreeable billing schedule and will issue an invoice for inspection costs that have accumulated.

The NRC is developing a system that will accommodate routine billing for accumulated inspection costs at a specified interval. Once that system is available, the NRC intends to progress bill for all inspections. The staff is seeking early comment on the long-term policy in this FY 1998 proposed rule. The necessary revision to 10 CFR 170 would be made in future rulemaking when the system is available to accomplish this.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes four amendments to 10 CFR Part 171.

First, the NRC proposes to amend § 171.13 to delete specific fiscal year references.

Second, the NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1998 to recover approximately 100 percent of the FY 1998 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees.

In the FY 1996 final rule, the NRC stabilized the annual fees by establishing the annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. For FY 1997, the NRC followed the same method as used in FY 1996. Because the amount to be recovered through fees for FY 1997 was identical to the amount to be recovered in FY 1996, establishing new baseline fees was not warranted for FY 1997. Based on a change in the distribution between Parts 170 and 171

fees, a reduction in the amount of the budget recovered for 10 CFR Part 170 fees, a reduction in other offsetting adjustments, and a reduction in the number of licensees paying annual fees, the FY 1997 annual fees for all licensees increased 8.4 percent compared to the FY 1996 annual fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

As indicated in the FY 1995 final rule, because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC intends to continue to stabilize annual fees by following the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

The FY 1998 amount to be recovered through fees is approximately $454.8 million, which is $7.5 million less than in FY 1997. The estimated amount to be recovered in 10 CFR Part 170 fees is $94.6 million, compared to $95.2 million for FY 1997. Due largely to the adjustment for the reduced number of licensees paying annual fees, the 10 CFR Part 171 annual fees must increase slightly in FY 1998 compared to FY 1997 in order to recover 100 percent of the budget. The reduced number of licensees paying annual fees is primarily the result of the equivalent of 2.5 fewer power reactors subject to annual fees in FY 1998. In addition, for FY 1998 there is a reduction of approximately 200 transportation quality assurance approvals as a result of the rulemaking in 1997 that combined these approvals with the Part 34 radiography licenses.

The FY 1998 annual fees for all licensees would be established at a level of 0.1 percent above the FY 1997 actual (prior to rounding) annual fees. The NRC notes that this increase is less than the 2.7 percent inflation factor used by the Office of Management and Budget for the FY 1998 budget. Based on the small change, the rounded FY 1998 annual fee for many fee categories is the same as the final (rounded) FY 1997 annual fee. Therefore, for many licensees, the proposed annual fee for FY 1998 is the same as the FY 1997 annual fee. Table I shows the total budget and amounts of fees for FY 1997 and FY 1998.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1997 ANNUAL FEES

[Dollars in Millions]

	FY97	FY98
Total Budget	$476.8	$472.8
Less NWF	−11.0	−15.0
Less General Fund (Hanford Tanks, Pilot for Regulation of DOE)	−3.5	−3.0
Total Fee Base	462.3	454.8
Less Part 170 Fees	95.2	94.6
Less other receipts	.....	.....
Part 171 Fee Collections Required	367.1	360.2
Part 171 Billing Adjustment [1]:		
Small Entity Allowance	5.0	5.8
Unpaid FY 1997 invoices	3.0	3.9
Payments from prior year invoices	−2.0	−3.2
Subtotal	6.0	6.5
Total Part 171 Billing	373.1	366.7

[1] These adjustments are necessary to ensure that the ''billed'' amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1998.

Third, Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of annual fees for FY 1998 for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. All other licensees and approval holders who held a license or approval on October 1, 1997, are subject to FY 1998 annual fees. This change is being made in recognition of the fact that since the final FY 1997 rule was published in May 1997, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1997 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all requests before the end of the fiscal year on September 30, 1997. Similar situations existed after the FY 1991–1996 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fourth, § 171.19 would be amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1998 either toward their total annual fee to be assessed or to make refunds, if necessary. Section 171.19(a) would also be amended to provide credit cards as an additional method of payment, and to provide additional information on electronic payments. Credit card payments would be accepted for small dollar payments. Electronic payments may be made by Fedwire (a funds transfer system operated by the Federal Reserve System) or by Automated Clearing House (ACH). ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Electronic payments will not only expedite the payment process, but will also save applicants and licensees considerable time and money over a paper-based payment system.

The NRC will send an invoice to reactors and major fuel cycle facilities for the amount of the annual fee upon publication of the FY 1998 final rule. For these licensees, payment will be due on the effective date of FY 1998 rule. Those materials licensees whose license anniversary date during FY 1998 falls before the effective date of the final FY 1998 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1998 rule would be billed, at the FY 1998 revised rates, during the anniversary month of the license and payment would be due on the date of the invoice.

The proposed amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The proposed changes are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996–1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

In addition to the amendment to 10 CFR Parts 170 and 171, the NRC is proposing conforming amendments to 10 CFR Parts 2 and 140 to include the additional methods of payments provided in 10 CFR Parts 170 and 171.

III. Section-by-Section Analysis

The following analysis of those sections that would be amended by this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 2

Section 2.205 Civil Penalties

Paragraph 2.205(i) would be revised to provide additional methods of payment, such as Automated Clearing House and credit cards, and to clarify that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission.

Part 140

Section 140.7 Fees

Paragraphs (a)(5) and (c) would be revised to delete references to payment instructions. A new paragraph (d) would be added to provide payment instructions, including clarification that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission and to provide additional methods of payments, such as Automated Clearing House and credit cards.

Part 170

Section 170.12 Payment of Fees

Paragraph (g) would be revised to indicate that costs incurred within 30 days after the inspection report is issued will be billed to the specific licensees, and that inspection fees will be assessed for each assigned resident inspector based on the number of hours the assigned resident inspector(s) is in an official duty status (i.e., excluding leave).

Paragraph (h) would be revised to provide additional methods of payment for fees assessed under 10 CFR 170 and to clarify that payment should be made in U.S. funds.

Section 170.20 Average Cost per Professional Staff-Hour

This section would be amended to establish two professional staff-hour rates based on FY 1998 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1998 for all activities whose fees are based on full cost under § 170.21 would be $124 per hour, or $219,901 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under § 170.31 would be $121 per hour, or $214,185 per direct FTE. The rates are based on the FY 1998 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for general and administrative support are allocated to each program based on that program's salaries and benefits. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1998 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Direct Program Salaries & Benefits	$103.9	$20.5
Overhead Salaries & Benefits, Program Travel and Other Support	55.3	$14.8
Allocated Agency Management and Support	101.7	$22.0
Subtotal	260.9	$57.3
Less offsetting receipts.		
Total Budget Included in Hourly Rate	$260.9	$57.3
Program Direct FTEs	1,186.4	267.3
Rate per Direct FTE	$219,901	$214,185
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	124	121

Dividing the $260.9 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,186.4) results in a rate for the reactor program of $219,901 per FTE for FY 1998. Dividing the $57.3 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (267.3) results in a rate of $214,185 per FTE for FY 1998. The Direct FTE Hourly Rate for the reactor program would be $124 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($219,901) by the number of productive hours in one year (1,776 hours) as indicated in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' The Direct FTE Hourly Rate for the materials program would be $121 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($214,185) by the number of productive hours in one year (1,776 hours).

The proposed FY 1998 hourly rates are slightly lower than the FY 1997 rates. The decrease in the hourly rates is primarily due to a change in application of the types of costs included in the hourly rates. Previously, the hourly rates were determined based on the premise that surcharge costs should be shared by those paying Part 170 fees for services as well as those

paying Part 171 annual fees. The proposed hourly rates have been determined based on the principle that the surcharge costs are more appropriately included only in the Part 171 annual fee.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1998 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1998 hourly rate for the reactor program, as shown in § 170.20. The fees in § 170.21 for the review of import and export licensing, facility Category K, would be adjusted for FY 1998 to reflect the revised hourly rate.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, would be modified to recover the FY 1998 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application (''flat'' fees) would be adjusted to reflect the decrease in the professional hourly rate from $125 per hour in FY 1997 to $121 per hour in FY 1998.

The amounts of the materials licensing ''flat'' fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing ''flat'' fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the proposed materials program hourly rate of $121, as shown in § 170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section would be revised to delete specific fiscal year references.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised as described below.

Paragraphs (b), (c)(1), (c)(2), (e) and (f) would be revised to comply with the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget for FY 1998.

Paragraph (b) would be revised in its entirety to establish the FY 1998 annual fee for operating power reactors and to change fiscal year references from FY 1997 to FY 1998. The fees would be established by increasing FY 1997 annual fees (prior to rounding) by 0.1 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as in the number of licensees paying the fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

Each operating power reactor would pay an annual fee of $2,980,000 in FY 1998.

Paragraph (e) would be revised to show the amount of the FY 1998 annual fee for nonpower (test and research) reactors. The 1998 proposed fee of $57,300 is the same as the FY 1997 annual fee. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

Paragraph (f) would be revised to change fiscal year date references.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being proposed because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the proposed rule for convenience.

Section 171.16(d) would be revised to establish the FY 1998 annual fees for materials licensees, including Government agencies, licensed by the NRC. The proposed annual fees were determined by increasing the FY 1997 annual fees (prior to rounding) by 0.1 percent. After rounding, many of the FY 1998 annual fees for materials licensees are the same as the FY 1997 annual fees.

The amount or range of the proposed FY 1998 annual fees for materials licenses is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	$2,607,000
Part 70—Low enriched fuel facility.	$1,280,000
Part 40—UF_6 conversion facility.	$649,000
Part 40—Uranium recovery facilities.	$22,300 to $61,800
Part 30—Byproduct Material Licenses.	$490 to $23,500 [1]
Part 71—Transportation of Radioactive Material.	1,000 to $78,900

MATERIALS LICENSES—ANNUAL FEE RANGES—Continued

Category of license	Annual fees
Part 72—Independent Storage of Spent Nuclear Fuel.	$283,000

[1] Excludes the annual fee for a few military ''master'' materials licenses of broad-scope issued to Government agencies, which is $421,000.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. All other licensees and approval holders who held a license or approval on October 1, 1997, are subject to the FY 1998 annual fees.

Holders of new licenses issued during FY 1998 would be subject to a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1998, will not be assessed an annual fee for FY 1998. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

Section 171.19 Payment

Paragraph (a) would be revised to provide additional methods of payment and to clarify that payments must be made in U.S. funds.

Paragraph (b) would be revised to give credit for partial payments made by certain licensees in FY 1998 toward their FY 1998 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1998 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraph (c) would be revised to update fiscal year references.

As in FY 1997, the NRC would continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This proposed rule applies to those materials licenses in the following fee categories: 1.C. and 1.D; 2.A. (2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1998 before the effective date of the FY 1998 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1998 final rule would be billed, at the FY 1998 revised rates, during the anniversary month of their license and payment would be due on the date of the invoice.

During the past seven years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used

for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1998 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1998 budget of $472.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program and the general fund related to commercial vitrification of waste at the Department of Energy Hanford, Washington site, and the pilot program pertaining to external regulation of the Department of Energy;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1998. The proposed rule would result a slight increase in the annual fees charged to some licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1998.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 2, 140, 170 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83, Stat. 444, as

amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.205, paragraph (i) is revised to read as follows:

§ 2.205 Civil penalties.

* * * * *

(i) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by a court of the United States, following reference of the matter to the Attorney General for collection, payment of civil penalties imposed under Section 234 of the Act are to be made payable to the U.S. Nuclear Regulatory Commission, in U.S. funds, by check, draft, money order, credit card, or electronic funds transfer such as Automated Clearing House (ACH) using Electronic Data Interchange (EDI). Federal agencies may also make payment by the On-Line Payment and Collections System (OPAC's). All payments are to be made in accordance with the specific payment instructions provided with Notices of Violation that propose civil penalties and Orders Imposing Civil Monetary Penalties.

* * * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

3. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

4. In § 140.7, paragraphs (a) and (c) are revised and paragraph (d) is added to read as follows:

§ 140.7 Fees.

(a)(1) Each reactor licensee shall pay a fee to the Commission based on the following schedule:

(i) For indemnification from $500 million to $400 million inclusive, a fee of $30 per year per thousand kilowatts of thermal capacity authorized in the license;

(ii) For indemnification from $399 million to $300 million inclusive, a fee of $24 per year per thousand kilowatts of thermal capacity authorized in the license.

(iii) For indemnification from $299 million to $200 million inclusive, a fee of $18 per year per thousand kilowatts of thermal capacity authorized in the license;

(iv) For indemnification from $199 million to $100 million inclusive, a fee of $12 per year per thousand kilowatts of thermal capacity authorized in the license;

(2) No fee will be less than $100 per annum for any nuclear reactor. This fee is due for the period beginning with the date on which the applicable indemnity agreement is effective. The various levels of indemnity fees are set forth in the schedule in this paragraph. The amount of indemnification for determining indemnity fees will be computed by subtracting from the statutory limit of liability the amount of financial protection required of the licensee. In the case of licensees subject to the provision of § 140.11(a), this total amount will be the amount as determined by the Commission, of the financial protection available to licensees at the close of the calendar year preceding the one in which the fee becomes due. For those instances in which a certified financial statement is provided as a guarantee of payment of deferred premiums in accordance with § 140.21(e), a fee of $1,000 or the indemnity fee, whichever is greater, is required.

* * * * *

(c) Each person licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant shall pay to the Commission a fee of $5,000 per year for indemnification. This fee is due for the period beginning with the date on which the applicable indemnity agreement is effective.

(d) Indemnity fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payments by the On-Line Payment and Collections System (OPAC's). Where specific payment instructions are provided on the invoices, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

5. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842 (31 U.S.C. 901).

6. Section 170.12, paragraphs (g) and (h) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(g) Inspection fees. (1) Inspection fees will be assessed to recover full cost for each resident inspector assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an offical duty status (i.e., all time in a non-leave status will be billed), and the hours will be billed at the appropriate hourly rate established in 10 CFR 170.20.

(2) Fees for all inspections subject to full cost recovery will be assessed on a per inspection basis for costs incurred up to 30 days after issuance of the inspection report. Inspection costs include preparation time, time on site, documentation time, and follow-up activities and any associated contractural service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty. Resident inspector time related to a specific inspection will be assessed in accordance with paragraph (g)(1) of this section, and will not be reflected in the costs billed for the specific inspection.

(3) Fees for resident inspectors' time and for specific inspections subject to full cost recovery will be billed on a quarterly basis and are payable upon notification by the Commission.

(h) Method of payment. License fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to

be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Where specific payment instructions are provided on the invoices to applicants and licensees for services rendered, payment should be made accordingly, e.g. invoice of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. Unbilled application and amendment fees are to be paid in a similar manner using the above methods. Applicants and licensees should contact the License Fee and Accounts Receivable Branch at 301–415-7554 to obtain specific written instructions for making electronic payments and credit card payments.

* * * * *

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$124 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$121 per hour.

8. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application—new license	7,900
Amendment	$7,900
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application-new license	4,800
Amendment	4,800
3. Application for export of components requiring foreign government assurances only.	
Application—new license	2,800
Amendment	2,800
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application—new license	1,200
Amendment	1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	
Amendment	180

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

9. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$560.
Amendment	$380.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$750.
Amendment	$290.
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1):	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1):	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$120.
Amendment	$280.
C. All other source material licenses:	
Application—New license	$3,600.
Amendment	$560.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$3,800.
Amendment	$530.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,500.
Amendment	$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D:	
Application—New license	$6,800.
Amendment	$630.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4):	
Application—New license	$1,900.
Amendment	$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,100.
Amendment	$380.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$1,900.
Amendment	$440.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	$4,500.
Amendment	$740.
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$2,700.
Amendment	$1,000.
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$4,400.
Amendment	$1,000.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,700.
Amendment	$300.
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,000.
Amendment	$340.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$5,400.
Amendment	$760.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,800.
Amendment	$620.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$2,000.
Amendment	$500.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	$4,300.
Amendment	$680.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$730.
Amendment	$340.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,500.
Amendment	$520.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,200.
Amendment	$220.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,400.
Amendment	$820.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$6,400.
Amendment	$1,000.
7. Medical licenses:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,500.
Amendment	$390.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,800.
Amendment	$710
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,800
Amendment	$450
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$570.
Amendment	$400.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,600.
Amendment—each device	$590.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$2,100.
Amendment—each device	$1,100.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$910.
Amendment—each source	$610.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$460.
Amendment—each source	$160.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$340.
Amendment	$620.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries:	
Application-new license	$7,900.
Amendment	$7,900.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country:	
Application-new license	$4,800.
Amendment	$4,800.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act:	
Application-new license	$2,800.
Amendment	$2,800.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures:	
Application-new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$180.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20:	
Application (initial filing of Form 241)	$1,100.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and certain renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval/review fees.* Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees.* Applications subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees.*

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for Category 1C only.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

10. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

11. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.17 and 171.16, will be published as a notice in the **Federal Register** as soon as is practicable but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees would be assessed based on the rates in effect for the previous fiscal year.

12. In § 171.15, paragraphs (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

* * * * *

(b) The FY 1998 annual fee for each operating power reactor which must be collected by September 30, 1998, is $2,980,000. This fee has been determined by adjusting the FY 1997 annual fee, (prior to rounding) upward by 0.1 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1997 annual fees were also determined by using this method. The FY 1997 annual fees increased 8.4 percent above the FY 1996 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under 10 CFR Part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center.

(c) The activities comprising the FY 1995 surcharge are as follows:

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities; and

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 1998 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$57,300
Test reactor	$57,300

(f) For each fiscal year, annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

13. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1998 as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1998, the maximum annual fee a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1998 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1998 annual fees, which must be collected by September 30, 1998, have been determined by adjusting upward the FY 1997 exact annual fees (prior to rounding), by 0.1 percent. As a result of rounding, the FY 1998 annual fee for some fee categories is the same as the FY 1997 annual fee. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996, when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1997 annual fees were also determined by using this method. The FY 1997 annual fees were increased 8.4 percent above the FY 1996 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities:	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$2,607,000
Nuclear Fuel Services SNM–124	2,607,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,280,000
General Electric Company SNM–1097	1,280,000
Siemens Nuclear Power SNM–1227	1,280,000
Westinghouse Electric Company SNM–1107	1,280,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities:	
(a) Facilities with limited operations:	
B&W Fuel Company SNM–1168	509,000
(b) All Others:	
General Electric SNM–960	346,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	283,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,100
E. Licenses or certificates for the operation of a uranium enrichment facility	2,607,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	649,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Class I facilities[4]	61,800
Class II facilities[4]	34,900
Other facilities[4]	22,300
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	45,400
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	8,000
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,700
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,600
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	11,200
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,700
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	5,000
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	8,900
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of terms that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	3,800
K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	3,300
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,300
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution	5,500
N. Licenses that authorize services for other licensees, except:	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,100
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	14,100
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 102,000
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,200
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,700
7. Medical licenses:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,300
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	23,500
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers:	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] NA
Other Casks	[6] N/A
B. Approvals issued of 10 CFR Part 71 quality assurance programs:	
Users and Fabricators	78,900
Users	1,000
11. Standardized spent fuel facilities.	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210.	283,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[6] N/A
17. Master materials licenses of broadscope issued to Government agencies	421,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,169,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees[1 2 3]
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,966,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the FY 1995 surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

14. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

(b) For FY 1998, the Commission will adjust the fourth quarterly invoice for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

(c) FY 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) For FY 1998, annual fees of less than $100,000 must be paid as billed by the NRC. As established in FY 1996, materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Beginning June 11, 1996, the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

Dated at Rockville, Maryland, this 24th day of March, 1998.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Appendix A to This Proposed Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980, as amended, (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate $1 million size standard for private practice physicians and applied a receipts-based size standard of $5 million to this class of licensees. This mirrored the revised SBA standard of $5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995, FY 1996 and FY 1997 fee rules and is continuing their use in this FY 1998 proposed rule. The small entity fee categories in § 171.16(c) of this proposed rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at $1,800 and a lower-tier small entity fee of $400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of $250,000 was raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million. The NRC believes that continuing these actions for FY 1998 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was about $445.3 million; for FY 1992, about $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $513 million; for FY 1995 about $503.6 million; for FY 1996 about $462.3 million; for FY 1997 about $462.3 million; and the amount to be collected for FY 1998 is approximately $454.8 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991), in FY 1992 (57 FR 32691; July 23, 1992), in FY 1993 (58 FR 38666; July 20, 1993), in FY 1994 (59 FR 36895; July 20, 1994), in FY 1995 (60 FR 32218; June 20, 1995), in FY 1996 (61 FR 16203; April 12, 1996), and in FY 1997 (62 FR 29194; May 29,1997) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FYs 1991–1997.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other adjustments as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is proposing to establish the FY 1998 annual fees for all licensees at 0.1 percent above the FY 1997 exact (prior to rounding) annual fees. Based on this small change, the proposed FY 1998 annual fee (rounded) for many fee categories are the same as the FY 1997 annual fees. Because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC intends to continue to stabilize annual fees by following the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

Public Law 104–121, the Contract with America Advancement Act of 1996, was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a ''major'' rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. The NRC's guide is Attachment 1 to Appendix A of this proposed rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR Part 170 and 171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1998.

II. Impact on Small Entities

The comments received on the proposed FY 1991–1997 fee rule revisions and the small entity certifications received in response to the final FY 1991–1997 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 20 percent (approximately 1,400 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991–1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a ''Mom and Pop'' type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-

person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since FY 1991 when annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the $3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these ''Mom and Pop'' type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991), in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993), in the FY 1994 rule (59 FR 36895; July 20, 1994), in the FY 1995 rule (60 FR 32218; June 20, 1995), in the FY 1996 rule (61 FR 16203; April 12, 1996), and in the FY 1997 rule (62 FR 29194; May 29, 1997). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991–1997 evaluations of these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and will continue for FY 1998, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1998, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1998, the NRC concludes that the 10 CFR Part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR Part 171 maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1998 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing, for FY 1998, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992–1997, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and now includes manufacturing companies with a relatively small number of employees.

III. Summary

The NRC has determined the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991–1997 rules remain valid for this proposed rule for FY 1998. In compliance with Public Law 104–121, a small entity compliance guide has been prepared by NRC and is shown as Attachment 1 to this Regulatory Flexibility Analysis.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1998

Contents

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, meets the thresholds for being considered a ''major'' rule under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1998. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1998 annual fees assessed under 10 CFR Part 171. The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small

Business Administration, were revised by the NRC and became effective on May 11, 1995. The small entity size standards are found at 10 CFR 2.810 of the NRC's regulations. To comply with the RFA, the NRC has established two tiers of small-entity fees. These fees are found at 10 CFR 171.16(c) of the NRC's fee regulations.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195–4514.

NRC Definition of Small Entity

The NRC, in consultation with the Small Business Administration, has defined a small entity for purposes of compliance with its regulations. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, a small entity is:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

NRC Small Entity Fees

The NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee. Approximately 800 licensees pay the small entity fee of $1,800 while 600 licensees pay the lower-tier, small-entity fee of $400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

3. The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $1,800 or $400, for each fee category shown on the invoice depending on the size of the entity. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the ''Amount Billed Represents 50% Proration.'' This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $900 or $200 for each fee category billed instead of the full small entity annual fee of $1,800 or $400.

4. A new small entity form (NRC Form 526) is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy '' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO 63195–4514.

5. Questions regarding fee invoices may be posed orally or in writing. Please call the license fee staff at 301–415–7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

6. False certification of small entity status could result in civil sanctions being imposed by the NRC pursuant to the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR Part 13.

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BILLING CODE 7590–01–P

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Federal Register

Wednesday
April 1, 1998

Part IX

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172

Improvements to Hazardous Materials Identification Systems; Editorial Revisions and Responses to Petitions for Reconsideration and Appeal; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM–206]

RIN 2137–AB75

Improvements to Hazardous Materials Identification Systems; Editorial Revisions and Responses to Petitions for Reconsideration and Appeal

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; technical amendments and responses to petitions for reconsideration and an appeal.

SUMMARY: In this final rule, RSPA is making changes to a final rule published on January 8, 1997, and modified in a July 22, 1997 final rule, which amended the Hazardous Materials Regulations to better identify hazardous materials in transportation. The primary changes include: clarifying requirements for display of identification numbers for large quantity shipments of hazardous materials; revising requirements for display of identification numbers for non-bulk packages of hazardous materials that are poisonous by inhalation in Hazard Zone A or B; and providing alternative methods for marking the carrier's telephone number on the exterior of a highway transport vehicle containing hazardous materials that is disconnected from its motive power and not marked with an identification number. Other minor technical and editorial changes are also made. In making improvements to the hazardous materials identification systems in the HMR, RSPA intends to improve safety for transportation workers, emergency responders, and the public.

In this final rule, RSPA is responding to four petitions for reconsideration of the July 22, 1997 final rule and one appeal of an RSPA denial of part of a petition for reconsideration of the January 8, 1997 final rule. Generally, this final rule clarifies and revises certain requirements in partial response to the petitions and the appeal and denies other parts of the petitions and the appeal.

DATES: *Effective date:* This final rule is effective October 1, 1998. The effective date for the final rules published under Docket HM–206 on January 8, 1997 (62 FR 1217) and July 22, 1997 (62 FR 39398) remains October 1, 1998.

Compliance dates: Voluntary compliance with the January 8, 1997 and the July 22, 1997 final rules have been authorized beginning February 11, 1997 and July 22, 1997, respectively. Voluntary compliance with this final rule is authorized beginning May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum or Paul L. Polydores, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

On January 8, 1997, RSPA published a final rule in the **Federal Register** (62 FR 1217) under Docket HM–206 that amended the hazard communication requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to enhance the identification of hazardous materials during transportation in commerce. The January 8, 1997 final rule was issued in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615), which required the Secretary of Transportation to initiate a rulemaking to, among other matters, determine methods of improving the existing system of placarding vehicles transporting hazardous materials. Based on the merit of petitions and other revisions RSPA determined to be necessary to correct or clarify the January 8, 1997 rule, a final rule was published in the **Federal Register** (62 FR 39398), on July 22, 1997, correcting the January 8, 1997 rule and responding to petitions for reconsideration.

Following publication of the July 22, 1997 amended final rule, RSPA received four petitions for reconsideration, an appeal under 49 CFR 106.38 of RSPA's denial of part of a petition for reconsideration of the January 8, 1997 final rule, and a separate inquiry identifying an error in the January 8, 1997 final rule that was not corrected in the July 22, 1997 final rule. In response to these, RSPA is revising four sections of the HMR as follows:

(1) In § 172.301(a)(3), concerning large quantities of hazardous materials in non-bulk packages, a revision is made to further clarify that a vehicle or container containing only a single hazardous material and no other material, hazardous or otherwise, in non-bulk packages loaded at one loading facility must be marked with the identification number.

(2) In § 172.313(c), concerning identification number marking of a material poisonous by inhalation (PIH) in Hazard Zone A or B in non-bulk packages, the phrase ''with more than 1,000 kg (2,205 lbs.)'' is changed to ''with 1,000 kg (2,205 lbs.) or more'' for consistency in approach with § 172.301(a)(3); the words ''Hazard Zone A and B'' are changed to ''Hazard Zone A or B''; and a provision is added clarifying the requirement for identification number marking display for different PIH materials in a vehicle or container.

(3) In § 172.504, Footnote 1 to placarding table 1 is revised to correctly state requirements applicable to exclusive use shipments of low specific activity and surface contaminated radioactive materials transported in accordance with § 173.427(b)(3) and (c).

(4) Section 172.606(b)(2) is revised to clarify methods for marking the carrier's telephone number on a highway transport vehicle containing hazardous materials that is disconnected from its motive power and not marked with an identification number.

In all other respects, RSPA is denying the petitions for reconsideration of the July 22, 1997 final rule and the appeal of RSPA's prior denial of a petition for reconsideration of the January 8, 1997 final rule. Denied are requests to: (1) increase from 1,000 kg to 4,000 kg the threshold quantity for identification number marking of PIH materials; (2) adopt additional provisions concerning responsibility for providing, affixing and maintaining identification number markings; (3) except placarded transport vehicles (without identification number markings) from carrier information contact requirements applicable to unattended motor vehicles; and (4) allow slogans or other similar communications (*e.g.*, ''Drive Safely'') to remain on placard-type displays or in placard holders until they wear out and are replaced.

II. Discussion of Editorial Changes and Responses to Petitions for Reconsideration and an Appeal Under 49 CFR 106.38

A. Identification Number Marking Display for Large Quantities of Hazardous Materials in Non-bulk Packages

In the January 8, 1997 final rule, a new requirement was adopted requiring display of identification numbers for large quantities of hazardous materials in non-bulk packages having a single identification number and having an aggregate gross weight of 4,000 kg or more in a transport vehicle or freight container. In the final rule, RSPA decided to avoid use of the economic

terms ''truckload'' and ''carload'' for the application of the identification number marking requirements to large quantities of hazardous materials in non-bulk packages in a vehicle or container. In addition, RSPA chose the 4,000 kg threshold to preclude application of the requirement to small vehicles, such as pick-up trucks and small vans. In the July 22, 1997 final rule, RSPA revised § 172.301(a)(3) to apply to a transport vehicle or freight container that is loaded at *one loading facility* with 4,000 kg or more of hazardous materials in non-bulk packages, when *all* the hazardous materials have the *same proper shipping name and identification number.*

The Hazardous Materials Advisory Council (HMAC) and Roadway Express, Inc., petitioned RSPA for further clarification on how the requirement is to be applied, particularly during pick-up and delivery of less-than-truckload (LTL) freight, and asked for guidance in this area. They also recommended that RSPA amend the regulations to address responsibility for providing, affixing, and maintaining the identification number marking displays. The petitioners believe responsibility should be separately set forth in § 172.301 in order to eliminate confusion or misunderstanding between persons who offer hazardous materials for transportation and carriers when the situation demands that a transport vehicle be properly marked for transportation. The petitioners said that the assignment of responsibility is obscured in a paragraph on general applicability (§ 172.300) rather than as clearly stated in a similar requirement in § 172.506 dealing with providing placards.

The petitioners also asked for guidance on the applicability of the identification number marking requirements for non-bulk packages in a transport vehicle or freight container carrying LTL freight. They indicated that different conclusions might be reached, depending on whether there were different hazardous materials that meet or exceed the threshold quantity (4,000 kg) loaded in the vehicle or container at the same or subsequent loading point.

RSPA believes the changes in the requirements for identification number marking made in the July 22,1997 final rule responded to many of the problems identified by the petitioners. RSPA modified the rule to apply only when *all* the hazardous materials loaded at *one loading facility* have the *same proper shipping name and identification number.* However, RSPA is revising § 172.301(a)(3) to further clarify that the requirement applies *only* when a vehicle contains *a single* hazardous material loaded at one facility, and *no* other materials, hazardous or otherwise. This clarification makes the requirement more consistent with provisions in the UN Recommendations for placing identification numbers on ''packaged dangerous goods of a single commodity which constitute a full load for the transport unit.''

In an effort to provide guidance and facilitate further clarification and understanding of this requirement, the following examples indicate whether identification numbers are required for shipments of non-bulk packages at *one loading facility*:

(*No*—Means no identification number required.)

Examples

(1) 4000 kg of ''Acetone, UN 1090'' and no other material (hazardous or non-hazardous)—*Yes*

(2) Less than 4000 kg of only a single HAZMAT—*No*

(3) 3,000 kg of ''Acetone, UN 1090'' and 2,000 kg of ''Paint, UN 1263''—*No*

(4) 5,000 kg of ''Acetone, UN 1090,'' 5,000 kg of ''Paint, UN 1263'' and 5,000 kg of ''Ethanol, UN 1170''—*No*

(5) 5,000 kg or more of ''Acetone, UN 1090'' and 1,000 kg of Paint, UN 1263'' in Limited Quantities, Small Quantities, or Consumer Commodities—*No*

(6) 5,000 kg or more of ''Acetone, UN 1090'' and 10,000 kg of automobile parts—*No*

RSPA believes that the requirements in § 172.300 adequately prescribe applicability and responsibility for the marking requirements in the HMR. That is, each person who offers a hazardous material for transportation must mark each package, freight container or transport vehicle containing the hazardous material as required in Subpart D of Part 172. When assigned the function to display the identification number marking, as in a situation which comes under carrier control (e.g., when a LTL freight carrier consolidates at one loading facility non-bulk packages of hazardous materials requiring identification number marking), the carrier bears responsibility for providing and affixing the identification number marking. For these reasons, RSPA is denying the petitions for an additional section that would essentially duplicate the requirements already set forth in § 172.300.

B. Identification Number Marking Display for Certain Quantities of Packaged PIH Materials

In the January 8, 1997 final rule, RSPA specified 1,000 kg as the threshold quantity for display of identification number markings for a PIH material in non-bulk packages in a transport vehicle or freight container. In the July 22, 1997 final rule corrections and responses to petitions for reconsideration, RSPA revised the identification number marking requirement to limit it to PIH materials in *Hazard Zone A or B* having the *same proper shipping name and identification number.* RSPA also included an exception from the currently required ''Inhalation Hazard'' marking provision when the words ''Inhalation Hazard'' appear on the PIH label or placard.

In their petitions, the Association of Waste Hazardous Materials Transporters (AWHMT), HMAC, and Roadway Express recommended that RSPA clarify, for consistency, the phrases ''more than'' as used in § 172.313(c) and ''or more'' as used in § 172.301(a)(3), that triggers compliance when the threshold quantity is met or exceeded for display of identification number markings. HMAC and Roadway Express recommended both sections read ''more than,'' while AWHMT took no position on which phrase would be more appropriate.

The Compressed Gas Association (CGA) submitted an appeal of RSPA's denial of their petition in the July 22, 1997 final rule, under the provisions of 49 CFR 106.38, and expressed its concern regarding multiple markings. CGA said:

> RSPA did respond to our previous comment on potentially misinterpreting markings for different hazard zone markings by restricting this to only Hazard Zone A and B. However, RSPA did not address CGA's concern about multiple markings for poisonous by inhalation materials causing confusion among the emergency responders.

CGA suggested that its concern be addressed by revising § 172.313(c) to be consistent with the wording in § 172.301(a)(3) that an identification number would be required only when *all* the Hazard Zone A or B materials in non-bulk packages loaded in the vehicle or container have the same proper shipping name and identification number. CGA indicated, by limiting application of the identification number marking for certain materials poisonous by inhalation, that such a revision would address their concerns relative to multiple markings causing confusion among emergency responders.

HMAC petitioned RSPA to revise § 172.313(c) and recommended that the identification number marking threshold, 1,000 kg for PIH materials in Hazard Zone A or B having the same proper shipping name and identification number in non-bulk packages, be raised to 4,000 kg, the same threshold for non-PIH hazardous materials in non-bulk packages. HMAC indicated that a different threshold for PIH materials would impose additional training problems for persons offering or transporting these materials.

CGA also had concerns regarding voluntary compliance. It said voluntary compliance as authorized in HM–206 creates three points of confusion, that is: (1) Emergency responders are unfamiliar with the new PIH label; (2) potentially, several different identification numbers create confusion about which hazardous material might be causing an emergency situation; and (3) because the transition provisions in § 171.14 allow labels and placards to be used interchangeably, the labels and placards may not be the same. CGA believes the issue of voluntary compliance is still a safety issue which needs to be addressed, and because of the possibility of confusion suggested that early training, before compliance enforcement, is necessary in this case.

CGA and ECOLAB Center generally expressed their concerns for continued harmonization with international standards, as it relates to the improvements to the hazardous materials identification system (HM–206). CGA stated that while they believe RSPA recognizes the importance of harmonization, as indicated by the statements in the preamble referring to the UN Committee of Experts, it is not clear to them what recourse it will have in the event RSPA's recommendations are not acceptable to the UN. It said, ''* * * it appears we will require two sets of placarding and labeling.'' The ECOLAB Center had similar concerns and stated:

* * * From the perspective of a multinational company, every divergence of hazmat regulations between the U.S. and the rest of the world causes confusion and possibility of errors. For several years, harmonization has been the aim and has been used to justify hazmat labeling, packaging, and labeling [sic] changes that have caused us significant expense. Now it appears that the U.S. will make its own choice and hope the rest of the world follows. If this is the beginning of a trend for the U.S., we request that you reconsider this policy, and remain open to voluntarily extending or eliminating the compliance date for these changes as the situation develops.

RSPA agrees with the petitioners that the threshold quantities in § 172.313(c) and § 172.301(a)(3) should be phrased in a consistent manner. The intent is to trigger compliance with the threshold quantity for identification number marking display under both provisions at the levels specified for each ''or more.'' Therefore, a revision is made in, § 172.313(c) to replace the phrase ''more than'' with ''or more'' for materials poisonous by inhalation. An editorial revision is also made in § 172.313, in paragraph (c), to change the phrase ''Hazard Zone A and B'' to correctly read ''Hazard Zone A or B.''

To reduce the burden of the identification number marking requirement and in response to CGA's concerns that problems may still exist for emergency responders in determining appropriate protective actions to be taken when multiple identification number markings are displayed for PIH materials, RSPA is revising § 172.313(c) to specify when a vehicle or freight container is carrying different PIH materials for which identification number marking is required, display of the identification number is only required for the PIH material in the hazard zone posing the greatest risk (i.e., Zone A takes precedence over Zone B), or if all the same hazard zone, the identification number must be displayed for the PIH material having the greatest aggregate gross weight. The following examples indicate whether the identification number is required for shipments of PIH materials in non-bulk packages at *one loading facility*:

Examples

(*No*—means no identification number required.)

Examples

(1) Less than 1,000 kg of PIH material in Hazard Zone A—*No*

(2) 1,000 kg of ''Methyl isocyanate, UN 2480, Zone A'' and 4,000 kg of ''Acetone, UN 1090''—*Yes, for Methyl isocyanate, UN 2480, because it is a PIH material in Zone A*

(3) 1,000 kg of ''Methyl isocyanate, UN 2480, Zone A,'' 1,000 kg of ''Allyl alcohol, UN 1098, Zone B,'' and 1,000 kg of ''Methyl mercaptan, UN 1064, Zone C''—*Yes, for Methyl isocyanate, UN 2480, because it is the PIH material with the highest hazard zone*

(4) 2,000 kg of ''Methyl isocyanate, UN 2480, Zone A,'' and 1,000 kg of ''Acrolein, inhibited, UN 1092, Zone A''—*Yes, for Methyl isocyanate, UN 2480, because it is the PIH material in the greatest quantity*

(5) 3,000 kg of ''Methyl isocyanate, UN 2480, Zone A,'' 2,000 kg of ''Acrolein, inhibited, UN 1092, Zone A,'' and 1,000 kg of ''Allyl alcohol, UN 1098, Zone B''—*Yes, for Methyl isocyanate, UN 2480, because it is the PIH material both in the highest hazard zone and in the greatest quantity*

RSPA believes that along with the effectiveness of the new PIH labels and placards (required for even small amounts of a PIH material), identification numbers ensure quick recognition of certain types and quantities of a PIH material in non-bulk packages in a vehicle or container. Emergency responders with immediate access (through the use of the DOT Emergency Response Guidebook or other emergency response information carried during transportation) to information on the potential hazards and health and safety risks associated with PIH materials will be better able to determine protective and mitigation actions at incidents involving these high risk materials.

RSPA does not agree with HMAC that the threshold for PIH (1,000 kg or more) and non-PIH materials (4,000 kg or more) should be the same. RSPA set the threshold quantity lower for PIH materials because of the significantly greater risk associated with these materials as opposed to most other hazardous materials. Because of the toxicity and volatility of a PIH material, a release would be immediately life threatening over a large area. The choice of protective options for a given situation depends on many factors. Whereas evacuation may be the best option (in some cases), in-place protection may be the best course in others. RSPA enhanced the regulations because they were inadequate in providing vital information to communicate the presence of a PIH material in non-bulk packages in a vehicle or container that, if released, may potentially pose severe and immediate risks to the public, transportation workers, and emergency response personnel.

RSPA agrees with HMAC that the new requirements may necessitate additional training for persons offering or transporting hazardous materials, particularly relative to the new requirements addressing poisonous materials which pose an acute inhalation toxicity. For compliance purposes, persons offering or transporting hazardous materials need to continually update their training to include the new requirements.

In regard to CGA's safety concerns on the issue of voluntary compliance, RSPA believes that voluntary compliance periods have historically helped industry in achieving compliance without compromising the safety of emergency responders. RSPA routinely provides voluntary or permissive compliance time frames, such as those provided for in § 171.14, before mandatory compliance is necessary. In fact, RSPA is often requested to extend mandatory compliance dates and various transitional provisions, while continuing to allow for permissive voluntary compliance, such as provided for in Docket HM–181 addressing changes to hazard communication requirements, such as marking, labeling, and placarding. The process of providing for voluntary compliance prior to mandatory compliance has worked well and allows industry to incrementally phase-in new requirements in an orderly manner so that new requirements are not implemented on a specific date without adequate time to implement new procedures or training programs.

RSPA also acknowledges that additional training is necessary to implement and understand the new requirements, particularly during the transition period. RSPA also recognizes the need to help emergency responders to more quickly recognize and identify the specific hazards of these types of materials. RSPA has taken steps to promote better understanding of the new requirements. For example, information is available on the new requirements through the RSPA Internet Web site (http://hazmat.dot.gov). Also, RSPA is revising current training materials, such as the widely distributed DOT ''Chart 10,'' a guide to help industry and emergency responders comprehend and apply the requirements for marking, labeling, placarding and emergency response information. Informational brochures are being developed to address the new requirements for improving the system of identifying and communicating the hazards associated with hazardous materials in transportation.

RSPA is aware of the concerns of petitioners regarding continued harmonization of the domestic regulations with the international standards, and harmonization has been one of our objectives for many years. RSPA evaluated the petitions to the January 8, 1997 and the July 22, 1997 final rules which requested that RSPA eliminate the new PIH label and placard, or not adopt them domestically until the labels and placards had been adopted for use in the international community. The petitions were denied. To date, no new information has been submitted to RSPA that would warrant reconsideration of the denial of the petitions on this issue. To allow the affected parties more time to come into compliance and to give the U.N. Committee of Experts more time to consider adoption of the new PIH labels and placards, in the July 22, 1997 final rule, RSPA changed the effective date for this portion of the rule from October 1, 1997 to October 1, 1998. Also, mandatory use of the new PIH labels and placards in domestic transportation is not required until October 1, 1999 for labels and October 1, 2001 for placards.

Over the years, RSPA has adopted classification, hazard communication and packaging requirements recommended by the U.N. Committee of Experts in order to facilitate international commerce. However, in the past, RSPA has not waited for development of an international standard before addressing pressing safety concerns such as establishing criteria for defining and classifying materials that are poisonous by inhalation, such as Acrolein, Methyl Isocyanate, and Allyl Alcohol. (Final Rule under Docket HM–196; 50 FR 41092; October, 8, 1985) Similarly, RSPA does not intend to wait for development of an international standard to gain the safety benefits deriving from a distinctive label and placard for PIH materials that may pose a substantial risk if released during transportation.

Harmonization does not always mean exact adoption of international standards without any deviation. In some instances, deviations from international standards are necessary to meet legislated requirements, such as the domestic regulatory requirements for hazardous wastes and hazardous substances. In other instances, the industry has often asked for and been provided with exceptions applicable to domestic transportation. The HMR often contains domestic exceptions that are supported by industry. For example, RSPA has provided certain domestic placarding exceptions that are not provided for by international standards, such as: 1) use of a DANGEROUS placard for mixed loads of Table 2 materials; 2) a domestic exception for the mandatory use of the Class 9 placard; and 3) exception from placarding small loads of Table 2 materials in non-bulk packagings (i.e., 1,001 pounds or less does not require placarding). RSPA will continue to work toward harmonization; however, as in the past, RSPA will continue to provide domestic exceptions when warranted and specify additional requirements when warranted.

C. RADIOACTIVE PLACARD Footnote to Placarding Table 1

RSPA received an inquiry regarding the footnote in § 172.504(e), placarding Table 1. In the January 8, 1997 final rule, footnote ''1'' regarding placarding for exclusive use shipments of low specific activity radioactive materials contains an incorrect section reference. In this final rule, footnote ''1'' is revised to read: ''1 RADIOACTIVE placard also is required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c).''

D. Carrier Emergency Information Contact Number for an Unattended Motor Vehicle Disconnected From Its Motive Power

In the January 8, 1997 final rule, RSPA added alternatives for compliance with the carrier emergency information contact number requirements for an unattended motor vehicle disconnected from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility. In that situation, the carrier must mark its telephone number on the motor vehicle, place shipping papers and emergency response information on the vehicle or have the shipping paper and emergency response information available as required in § 172.602(c)(2). In the July 22, 1997 final rule, RSPA provided an exception from requirements when the motor vehicle is marked with the identification number of each hazardous material loaded inside the vehicle, and the identification number marking is visible on the outside of the motor vehicle.

Roadway Express had concerns with the methods available for marking a carrier's telephone number on a vehicle disconnected from its motive power when motor carriers use rental and ''pool'' equipment for varying periods of time in order to meet the demands of each person who offers a hazardous material for transportation. It stated that it is impractical to expect carriers to mark a telephone number on a piece of equipment that may be in the carrier's control for only a few days, and suggests revising the requirements in § 172.606(b)(2) to allow affixing or attaching a device, such as a plastic tag, directly to the brake hose or ''gladhand'' connection.

HMAC and Roadway Express petitioned RSPA to expand this exception for a marked vehicle to

include ''all *placarded* or marked trailers, semi-trailers, or freight containers.'' Roadway Express stated that on the average, LTL carriers consolidate 30 individual shipments on a transport vehicle and that when non-bulk packages of hazardous materials comprise even a small percentage of the total load, the variety of materials contained in one consignment may make marking individual identification numbers burdensome and impractical. HMAC stated:

> While documentation on trailers or freight containers that are not otherwise placarded or marked may be required, those which already display placards or identification number markings shouldn't also be required to have telephone numbers or shipping papers. Therefore, HMAC recommends that the exception granted in § 172.606(c) be expanded to include ''all placarded or marked trailers, semi-trailers, or freight containers.''

HMAC believes that the regulations for display of a carrier's telephone number or the availability of shipping papers on certain trailers and freight containers removed from motive power are not responsive to the problems encountered by the LTL segment of the transportation industry. HMAC stated that the new requirements will make it more difficult for motor carriers to use rental trailers to conduct business. It said, for example, one particular motor carrier used nearly 6,000 rental trailers in one month in order to accommodate the demands of each person who offers a hazardous material for transportation, and thus display of the motor carrier's telephone number is not possible on such trailers, and rental trailers normally do not have a pouch or pocket to store shipping papers.

Roadway Express also said that because shipping papers and emergency response information documents are also a means of complying with § 172.606(b)(2) and must be readily available on the transport vehicle, document maintenance and security provisions, as it relates to proprietary information (such as the name and address of both the persons who offer a hazardous material for transportation and the carrier's customer), should be considered.

In this final rule, RSPA is editorially revising the introductory text of § 172.606 and paragraph (a) and is revising paragraph (b) for clarity and in response to petitioners. RSPA notes that the provision adopted in § 172.606(b)(2) in the January 8, 1997 final rule, allows a carrier to display only the carrier's telephone number and does not require disclosure of information which the carrier may consider proprietary. The carrier information contact requirement applies to a trailer or freight container-on-chassis dropped at a public place such as a truck stop or motel, but does not apply when a vehicle is dropped at a facility covered by the provisions of § 172.602(c)(2), such as a carrier's facility or a marine terminal. RSPA notes under § 172.602(c)(2), a facility may be operated by someone other than a carrier, consignor, or consignee. In this final rule, RSPA is revising the introductory language in paragraph (b) of § 172.606 to clarify this. RSPA is removing the provision in paragraph (b)(1) because that requirement already applies to facilities under § 172.602(c)(2) and is not applicable outside such a facility. Also, in response to these petitions, RSPA is revising § 172.606(b), to clarify that the carrier's telephone number may be marked on the exterior of the vehicle, or attached to the vehicle on a label, tag or sign at the brake hose or electrical connection.

RSPA reminds motor carriers of the requirement in the Federal Motor Carrier Safety Regulations, 49 CFR 397.5, which requires, with limited exceptions, that a motor vehicle required to be placarded must be attended by its driver at all times when the motor vehicle is located on a public street or shoulder of a public highway. Based on this requirement, and taking into account longstanding provisions which apply to facilities under § 172.602(c)(2), RSPA believes the carrier information contact requirement will not pose an unreasonable burden on motor carriers.

RSPA does not agree with the petitioners in regard to expanding the exception in § 172.606(c) to include any *placarded* motor vehicle disconnected from its motive power. A placard (e.g., FLAMMABLE, POISON) provides basic identification regarding the hazard of a material, but it does not communicate specific information regarding the contents of a vehicle as do shipping papers or identification number markings. The methods currently prescribed in § 172.606(b) facilitate access to more detailed response, information for the hazardous material in such a vehicle.

RSPA acknowledges Roadway Express' concern relative to security provisions as it relates to information on shipping papers that a carrier considers ''proprietary,'' such as the name and address of its customers. RSPA provided a number of options for compliance, as follows: (1) A carrier's telephone number marked or attached to a motor vehicle, (2) a copy of a shipping paper and emergency response information attached to a motor vehicle, or (3) an identification number marking displayed on the exterior of a motor vehicle. None of these options require disclosure of the name and address of consignors or consignees. RSPA encourages the trucking industry to develop uniform methods for displaying information required by § 172.606.

E. Prohibited Placarding (Slogans)

In the January 8, 1997 final rule, RSPA revised § 172.502 to prohibit extraneous information (e.g., ''Drive Safely'') on placard-type displays or in placard holders. As modified in the July 22, 1997 final rule, RSPA has specified that this prohibition does not apply until October 1, 2001, to a slogan which was permanently marked on a transport vehicle, bulk packaging, or freight container on or before August 21, 1997. This should provide sufficient notice and prevent the unintended application of an *immediate* prohibition to a slogan that may have been permanently marked on a transport vehicle, bulk packaging or freight container between October 1, 1996 and issuance of the January 8, 1997 final rule.

ECOLAB Center petitioned RSPA to allow an indefinite period until placards must be replaced in order to remove extraneous information or slogans (e.g., ''Drive Safely''). ECOLAB believes that prohibiting such slogans on placards and in placard holders is not an enhancement of safety, and said:

> Due to the lowering of the weight for which a class placard is required, and the requirement to placard for a large quantity of non-bulk materials, the number of occasions when a safety slogan placard may be displayed will be dramatically reduced. Would not a reasonable compromise be to let existing placard sets be used until retirement or replacement?

RSPA denies the petition. RSPA believes it has provided a reasonable period for industry to comply with the requirement to remove, cover, or obliterate slogans or other similar communications on placard-type displays or in placard holders on transport vehicles and freight containers. With the extension of the overall effective date of the rule, October 1, 1998, and the compliance date for mandatory removal of these signs, October 1, 2001, affected businesses are provided sufficient time to make conversion.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866

and, therefore, was not reviewed by the Office of Management and Budget.

The regulatory evaluation prepared for the August 15, 1994 NPRM was examined and modified for the January 8, 1997 final rule. Both of these documents are available for review in the public docket. The July 22, 1997, final rule made relatively minor, incremental changes in the regulations concerning placarding and other means of communicating the hazards of materials in transportation, and in most cases clarifies and relaxes provisions of the January 8, 1997 final rule. This final rule denies an appeal under 49 CFR 106.38, and several petitions for reconsideration of certain aspects of the July 22, 1997 final rule, and makes several editorial revisions. Accordingly, no additional regulatory evaluation was performed.

B. Executive Order 12612

The January 8, 1997 and the July 22, 1997 final rules and this final rule were analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, content, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1998.

C. Regulatory Flexibility Act

This final rule, which responds to petitions for reconsideration and an appeal under 49 CFR 106.38, makes several editorial revisions for clarification of the regulations. Although this final rule applies to each person who offers a hazardous material for transportation and all carriers of hazardous materials, some of whom are small entities, the requirements contained herein will not result in significant economic impacts. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in 49 CFR Parts 172 through 177 pertaining to shipping papers have been approved under OMB approval number 2137–0034. This final rule makes only editorial corrections and does not increase any burden to provide information. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.301, as amended at 62 FR 39404, effective October 1, 1998, paragraph (a)(3) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packages.

(a) * * *

(3) *Large quantities of a single hazardous material in non-bulk packages.* A transport vehicle or freight container containing only a single hazardous material in non-bulk packages must be marked, on each side and each end as specified in the §§ 172.332 or 172.336, with the identification number specified for the hazardous material in the § 172.101 Table, subject to the following provisions and limitations:

(i) Each package is marked with the same proper shipping name and identification number;

(ii) The aggregate gross weight of the hazardous material is 4,000 kg (8,820 pounds) or more;

(iii) All of the hazardous material is loaded at one loading facility;

(iv) The transport vehicle or freight container contains no other material, hazardous or otherwise; and

(v) The identification number marking requirement of this paragraph (a)(3) does not apply to Class 1, Class 7, or to non-bulk packagings for which identification numbers are not required.

* * * * *

3. In § 172.313, as amended at 62 FR 39405, effective October 1, 1998, paragraph (c) is revised to read as follows:

§ 172.313 Poisonous hazardous materials.

* * * * *

(c) A transport vehicle or freight container containing a material poisonous by inhalation in non-bulk packages shall be marked, on each side and each end as specified in § 172.332 or § 172.336, with the identification number specified for the hazardous material in the § 172.101 Table, subject to the following provisions and limitations:

(1) The material is in Hazard Zone A or B;

(2) The transport vehicle or freight container is loaded at one facility with

1,000 kg (2,205 pounds) or more aggregate gross weight of the material in non-bulk packages marked with the same proper shipping name and identification number; and

(3) If the transport vehicle or freight container contains more than one material meeting the provisions of this paragraph (c), it shall be marked with the identification number for one material, determined as follows:

(i) For different materials in the same hazard zone, with the identification number of the material having the greatest aggregate gross weight; and

(ii) For different materials in both Hazard Zones A and B, with the identification number for the Hazard Zone A material.

§ 172.504 [Amended]

4. In § 172.504(e), as amended at 62 FR 39407, effective October 1, 1998, footnote 1 in Table 1 is amended to read as follows:

''[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.''

5. In § 172.606, as added at 52 FR 1234 and amended at 62 FR 39409, effective October 1, 1998, the introductory text is removed, and paragraphs (a) and (b) are revised to read as follows:

§ 172.606 Carrier information contact.

(a) Each carrier who transports or accepts for transportation a hazardous material for which a shipping paper is required shall instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier (e.g., by telephone or mobile radio) in the event of an incident involving the hazardous material.

(b) For transportation by highway, if a transport vehicle, (e.g., a semi-trailer or freight container-on-chassis) contains hazardous material for which a shipping paper is required and the vehicle is separated from its motive power and parked at a location other than a facility operated by the consignor or consignee or a facility (e.g., a carrier's terminal or a marine terminal) subject to the provisions of § 172.602(c)(2), the carrier shall—

(1) Mark the transport vehicle with the telephone number of the motor carrier on the front exterior near the brake hose and electrical connections or on a label, tag, or sign attached to the vehicle at the brake hose or electrical connection; or

(2) Have the shipping paper and emergency response information readily available on the transport vehicle.

* * * * *

Issued in Washington, D.C. on March 26, 1998 under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–8436 Filed 3–31–98; 8:45 am]

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Federal Register

Wednesday
April 1, 1998

Part X

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27744; Notice No. 983]

RIN 2120–AG56

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Special Federal Aviation Regulation (SFAR) 67 to extend until May 10, 2000, the prohibition on flight operations within portions of the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier, and to permit flight operations by the aforementioned persons through Afghan airspace east of 070°35′ east longitude, or south of 33° north latitude. This action is necessary to continue the prevention of an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Afghanistan.

DATES: Comments must be received by April 16, 1998.

ADDRESSES: Comments should be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 27744, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202)267–3515.

SUPPLEMENTARY INFORMATION:

Comments Invited

All interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments as they may desire,including comments relating to the environmental, energy, or economic impacts. Communications should identify the regulatory docket number, and be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 27744, 800 Independence Ave., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov. All communications received will be considered by the Administrator. This proposed rule may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 915–G of the FAA Building, 800 Independence Ave., Washington, DC 20591. Persons wishing to have the FAA acknowledge receipt of their comments must submit a self-addressed, stamped postcard with the following statement: ''Comments to Docket Number 27744.'' The postcard will then be dated, time stamped, and returned by the FAA.

Availability of This Proposed Rule

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339), the **Federal Register's** electronic bulletin board service ((202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page a http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of rulemaking, ARM–1, 800 Independence Ave, SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this proposal.

Persons interested in begin placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On May 10, 1994, the FAA issued SFAR 67 in response to the threat to civil aviation due to the civil war in Afghanistan (59 FR 25282; May 14, 1994). SFAR 67 was originally scheduled to expire after one year. Notices of the extension of SFAR 67 were published on May 15, 1995 (60 FR 25980) and May 14, 1996 (61 FR 24430). On May 9, 1997, the FAA again extended the expiration date to May 10, 1998, and permitted flight operations by affected persons through Afghan airspace over the Wakhan Corridor (62 FR 26890; May 15, 1997).

Fighting between government and opposition forces, and the resulting threat to civil aviation, continues in portions of Afghanistan, although at a lower level and intensity in the areas proposed to be opened to U.S. civil aviation than when SFAR 67 was originally issued and later amended. The Taliban have controlled all of southern Afghanistan for a considerable time; currently the fighting is primarily confined to the central Kabul area and northern and northwestern Afghanistan. While other areas of the country continue to be the scene of sporadic fighting, the factions involved have little or no capability to target aircraft operating at normal cruising altitudes. The area where civil aviation most threatened in Afghanistan lies in an area north of 33° north latitude and west of 070°35′ east longitude.

The primary factions, the Taliban and a loose coalition of opposition forces, still possess a wide range of sophisticated surface- and air-based weapons that potentially could be used to attack civil aircraft overflying central, northern, and northwestern Afghanistan at cruising altitudes. These weapons include fighter and attack aircraft armed with cannons and air-to-air missiles, and surface-to-air missiles (SAM) systems. Although aircraft have been used primarily for ground attacks against airfields and other key facilities, air-to-air encounters also have been observed. Press reports also suggest that a number of Afghan military and civil aircraft have been shot down using SAMs. The fluctuations in the level and intensity of combat create an unsafe environment for transiting civilian aircraft in the vicinity of Kabul and northern and northwestern Afghanistan.

Advisories issued by the International Civil Aviation Organization (ICAO) urging civil aircraft to avoid Afghan airspace remain valid for at least a portion of Afghan airspace. In a letter dated April 8, 1994, Assad Kotaite, President of the ICAO Council, issued a notice urging air carriers to discontinue flights over Afghanistan. In a subsequent letter dated November 14, 1994, Dr. Kotaite warned of the continuing risks associated with flights over Afghanistan, including operations using certain routes developed by the Afghan government or neighboring countries. On September 18, 1995, in yet another letter addressing flight safety over Afghanistan, Dr. Kotaite advised that ''the safety of international

civil flight operations through the Kabul [Flight Information Region] can not be assured.'' Dr. Kotaite did indicate in this letter that if operators were using Afghan airspace, flying time over Afghanistan should be minimized and that route V500, promulgated by a Pakistani notice to airmen (NOTAM), involves only a two minute flying time over Afghanistan. A letter of May 10, 1996, advised of a report by the crew of a Boeing 747 cargo aircraft of anti-aircraft fire in the vicinity of Kabul. These advisories, which are still germane, reflect the uncertain nature of the situation and underscore the dangers to flights in portions of Afghan airspace.

In the past, at least two major factions in Afghanistan have deliberately targeted civil aircraft. Such policies occasionally have been publicly announced. In a statement released in September 1995, General Dostam, who at the time opposed the nominal Rabbani Government, warned all international air carriers that his forces would force or shoot down any airplane venturing into airspace controlled by his faction without first obtaining proper clearance from them. This statement followed a similar warning issued in 1994 by an opposition council. Air corridors over central Afghanistan have been closed frequently as a result of these threats and active factional fighting.

Currently, none of the factions in the civil war has a clear intent to deliberately target a foreign-flagged commercial air carrier. However, the Taliban's continued frustration with the airlift of arms, ammunition, and supplies to other factions, combined with the other factions' interest in bringing down Taliban flights, creates a potentially hazardous environment whereby an airliner might be misidentified and inadvertently targeted in the central, northern, and northwestern portions of Afghanistan. The FAA has received reports that scheduled passenger flights have been intercepted by opposition fighter aircraft. In July 1996, a Taliban fighter intercepted a Pakistan International Airlines flight enroute from London to Lahore. Charter flights appear to be equally or more vulnerable. A Russian-operated charter flight from the UAE carrying unmanifested ammunition to Kabul was forced to land in Kandahar; the aircraft and its crew were held there for almost one year before escaping in August 1996.

The control and operation of Afghanistan's limited air traffic control facilities remains relatively stable. Although central Afghan government control over installations critical to air traffic navigation and communication changed hands when the Taliban took control of Kabul, the transfer of authority went smoothly. Indeed, most air traffic control employees remained on the job and only the senior leadership was replaced. If opposition forces retake Kabul, the realignment of control to the previous occupants should be smooth as well.

The greatest threat to civil aviation is within the area over Afghanistan north of 33° north latitude and west of 070°35′ east longitude. The fighting described above, and the resulting threat to civil aviation, has occurred well away from the Wakhan Corridor, which the FAA opened to U.S. operators in May 1997 by allowing operations east of 071°35′ east longitude. Several non-U.S. carriers also utilize international air corridor V876, just west of the Wakhan Corridor, as an alternate to the Wakhan Corridor. The area surrounding V876 (east of 070°35′ east longitude) is remote and sparsely populated. There is no evidence that Afghan factions or terrorist elements would target or make preparations for specific operations against U.S. or other international air carriers overflying Afghanistan east of 070°35′ east longitude, which includes V876. While an action aimed at shooting down or intercepting an aircraft on V876 cannot be absolutely ruled out, it is considered unlikely. The U.S. Government assesses the overall risk for flights using V876 as low; the risk for the Wakhan Corridor continues to be assessed as minimal. The slightly higher threat along V876 comes mainly from the fact that flights could cross factional boundaries and areas of expected fighting. This threat is mitigated by the lack of surface-to-air missiles and fighter aircraft in this area and the lack of intent to target aircraft by the armed factions in the area. Several non-U.S. air carriers currently operate safely along the V876 airway, and the International Air Transport Association endorses its use. Therefore, the FAA proposes to remove the flight prohibition for that portion of Afghan airspace east of 070°35′ east longitude.

Similarly, civil aviation operations along several routes south of 33° north latitude—particularly G202 and V922—would encounter minimal to low risk. The Taliban has controlled all of southern Afghanistan, including the areas encompassing the routes south of the 33° north latitude. That area has remained relatively stable, with no fighting observed for at least two years. Therefore, the FAA proposes to remove the flight prohibition for that portion of Afghan airspace south of the 33° north latitude.

Proposed Amendment of Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that continued action by the FAA is necessary to prevent the injure to U.S. operators or loss of certain U.S.-registered aircraft conducting flights in the vicinity of Afghanistan. I find that the current civil war in Afghanistan continues to present an immediate hazard to the operation of civil aircraft within portions of Afghan airspace. Accordingly, I am proposing to extend for 2 years the prohibition under SFAR 67 on flight operations within the territory and airspace of Afghanistan. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. SFAR 67 would expire on May 10, 2000.

I also am proposing to order the amendment of SFAR 67 to allow flights by United States air carriers and commercial operators, by any person exercising the privileges of a certificate issued by the FAA, or by an operator using aircraft registered in the United States through Afghan airspace east of 070°35′ east longitude or south of 33° north latitude.

The Department of State has been advised of the actions proposed herein.

Regulatory Evaluation Summary

In accordance with SFAR 67, United States air carriers and commercial operators currently use alternate routes to avoid Afghan territory and airspace. Navigating around Afghanistan results in increased variable operating costs, primarily for United States air carriers operating between Europe and India. Based on data identified during the promulgation of SFAR 67, the FAA estimates that the weighted-average variable cost for a wide-body aircraft is approximately $3,200 per hour. Based on data received from two United States air carriers, the additional time it takes to navigate around Afghanistan ranges from 10 minutes by flying over Iran to between one and four hours by flying over Saudi Arabia (depending on the flight's origin and destination). Additional costs associated with these alternate routes range from little, if any, by flying over Iran to between $3,200 to $12,700 per flight over Saudi Arabia.

Last year the FAA amended SFAR 67 to allow for flights along the route V500 airway that passes through the Wakhan

Corridor. This amendment to the extension to SFAR 67, allows United States air carriers access to more Afghan airspace east of 070°35′ east longitude and south of 33° north latitude (the old boundaries were 071°35′ east longitude). There is no inordinate hazard to persons and aircraft, due to the remote, sparsely populated nature of the Wakhan Corridor, and because no combat action is known to have occurred in the area or south of 33° north latitude for at least two years. This proposed amendment provides U.S. air carriers with the opportunity to operate along more routes than previously allowed. If U.S. air carriers choose to fly along the routes east of 070°35′ east longitude or south of 33° north latitude, they could experience the same cost savings that route V500 offered, which ranged from approximately $530 by flying over Iran, and between $3,200 to $12,700 per flight over Saudi Arabia.

This action imposes no additional cost burden on U.S. air carriers, only cost savings. In view of the foregoing, the FAA has determined that the extension to SFAR 67 is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

The FAA has determined that none of the United States air carriers or commercial operators are small entities. Therefore, the SFAR would not impose a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

When the FAA promulgated SFAR 67, it found that the SFAR could have an adverse impact on the international flights of United States air carriers and commercial operators because it could marginally increase their operating costs and flight times relative to foreign carriers who continue to overfly Afghanistan. This action does not impose any restrictions on United States air carriers or commercial operators beyond those originally imposed by SFAR 67. Therefore, the FAA believes that the SFAR would have little, if any, effect on the sale of United States aviation products and services in foreign countries.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meangingful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This proposal contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Federalism Determination

The amendment proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 4168; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Significance

The FAA has determined that this action is not a ''significant regulatory action'' under Executive Order 12866. This action is considered a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Afghanistan are not currently being conducted by United States air carriers or commercial operators, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration is proposing to amend 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 47122, 47508, 47528–47531.

2. Paragraphs 3 and 5 of SFAR 67 are proposed to read as follows:

SPECIAL FEDERAL AVIATION REGULATIONS NO. 67—PROHIBITION AGAINST CERTAIN FLIGHTS WITHIN THE TERRITORY AND AIRSPACE OF AFGHANISTAN

* * * * *

3. *Permitted Operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Afghanistan:

a. Where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA; or

b. East of 070°35′ east longitude, or south of 33° north latitude.

* * * * *

5. *Expiration.* This Special Federal Aviation Regulation remains in effect until May 10, 2000.

Issued in Washington, DC, on March 26, 1998.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

[FR Doc. 98–8495 Filed 3–31–98; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday
April 1, 1998

Part XI

Department of Education

Indian Education Formula Grants to Local Education Agencies; Notice

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Indian Education Formula Grants to Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice establishing closing date for applications for awards for fiscal year (FY) 1998.

SUMMARY: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that such programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards. Although the application package cited a March 10, 1998 closing date for submission of grant applications, a delay in publishing the closing date occurred. This notice establishes the new closing date for transmittal of applications and for intergovernmental review as cited in the application package. Applicants that have already submitted an application in response to the March 10, 1998 date cited in the application package need not submit another application. However, those applicants have until the new closing date to submit any revisions to their application.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: May 1, 1998. Applications not meeting the transmittal deadline of May 1, 1998 will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline *may* be considered for funding if the Secretary determines, under section 9117(d) of the Elementary and Secondary Education Act of 1965 (the Act), that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for intergovernmental review: July 1, 1998.

Available funds: The appropriation for this program for fiscal year 1998 is $59,750,000, which should be sufficient to fund all eligible applicants.

Estimated Range of awards: $3,000 to $1,300,000.

Estimated average size of awards: $47,000.

Estimated number of awards: 1,250.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 60 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

FOR APPLICATIONS OR INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building—Room 4300, Washington, D.C. 20202–6335. Telephone: (202) 260–1683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Note: The official version of a document is the document published in the **Federal Register**.

Program authority: 20 U.S.C. 7811.

Dated: March 30, 1998.

Gerald N. Tirozzi.

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 98–8661 Filed 3–31–98; 8:45 am]

BILLING CODE 4000–01–P

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Federal Register

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FEDERAL REGISTER PAGES AND DATES, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 1, 1998

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Agricultural Marketing Service

Limes and avacados grown in—

Florida; published 3-31-98

Nectarines and peaches grown in California; published 4-1-98

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bifenthrin; published 4-1-98

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FEDERAL DEPOSIT INSURANCE CORPORATION

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Payment of interest or dividends on demand deposits; exception to prohibition; published 2-19-98

FEDERAL RESERVE SYSTEM

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Borrowing by brokers and dealers; revision; published 1-16-98

FEDERAL TRADE COMMISSION

Practice and procedure:

Appearances before Commission; restrictions and public disclosure requirements; published 4-1-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

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Physical therapy, respiratory therapy, speech language pathology, and occupational therapy services; salary equivalency guidelines; published 1-30-98

INTERIOR DEPARTMENT

Indian Affairs Bureau

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Resource allocation methodology; simplification; published 3-2-98

LABOR DEPARTMENT

Employment and Training Administration

Indian and Native American welfare-to-work grants program; governing provisions; published 4-1-98

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Credit union service organizations; update and clarification; published 3-5-98

Mergers of federally-insured credit unions and voluntary termination or conversion of insured status—

Disclosure forms; published 3-4-98

Mergers or conversions of federally-insured credit unions to non credit union status—

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Over-order price regulations:

Compact over-order price regulations-

Class I fluid milk route distributions in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; published 2-27-98

NUCLEAR REGULATORY COMMISSION

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Chief Financial Officer Office et al.; published 4-1-98

PENSION BENEFIT GUARANTY CORPORATION

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Subsidiary stock holding companies; establishment; published 3-9-98

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Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Illinois; comments due by 4-10-98; published 3-11-98

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CFR ISSUANCES 1998
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This list sets out the CFR issuances for the January–April 1998 editions and projects the publication plans for the **July, 1998** quarter. A projected schedule that will include the **October, 1998** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1997–1998 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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